



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

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

In Re: 26666007

Date: APR. 27, 2023

Appeal of Nebraska Service Center Decision

Form I-485, Application to Adjust Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) based on their derivative “U-3” nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director of the Nebraska Service Center denied the Form I-485, Application to Adjust Status of U Nonimmigrant (U adjustment application), concluding that the Applicant did not establish she held U-3 nonimmigrant status at the time she filed her U adjustment application. The Applicant filed a motion to reopen and reconsider and the Director affirmed the initial decision. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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.

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 their admission as a U nonimmigrant and their continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant “continue to hold such status at the time of [the filing of the U adjustment] application” 8 C.F.R. § 245.24(b)(2)(ii).

The Applicant is a native and citizen of El Salvador. Her mother filed a Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U nonimmigrant petition), on her behalf. USCIS approved the derivative U nonimmigrant petition with petition validity dates from April 10, 2018, to April 9, 2022. The Applicant was in El Salvador at the time her derivative U nonimmigrant petition was approved, and she subsequently obtained a U-3 nonimmigrant visa through consular processing with the U.S. Department of State (DOS). The DOS issued the Applicant’s U-3

nonimmigrant visa on June 22, 2018, with an expiration date of April 9, 2022. The Applicant entered the United States on July 25, 2018, and U.S. Customs and Border Protection (CBP) admitted her in U-3 nonimmigrant status until October 20, 2019. Therefore, the Applicant's U-3 nonimmigrant status expired on October 20, 2019, and not on April 9, 2022. The Applicant filed her U adjustment application on September 7, 2021, and the Director denied the U adjustment application because she was no longer in U-3 nonimmigrant status on the filing date.

On appeal, the Applicant asserts that she relied on the USCIS approval notice for her derivative U nonimmigrant petition, as represented on her Form I-797C, Notice of Action, to determine the validity period of her U-3 nonimmigrant status. We note the Form I-797C specifies that "[t]he approval of this petition does not grant any immigration status and does not guarantee your derivative family member will be found eligible for a visa" When USCIS approves a derivative U nonimmigrant petition for a qualifying family member who is outside the United States, USCIS will notify the principal foreign national of such approval and forward the approved petition to the DOS. 8 C.F.R. § 214.14(f)(6)(ii). Subsequently, the derivative family member "should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant." Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,014 (Sept. 17, 2007). The period of authorized stay is determined at the time of admission, and "as with all other nonimmigrant classifications, the U nonimmigrant's Form I-94 issued to evidence status will indicate the approved period of stay." *Id.* at 53,028.¹

As noted above, CBP determined the Applicant's period of U-3 nonimmigrant status at the time of her admission into the United States, and that status expired on October 20, 2019, prior to the filing of her U adjustment application on September 7, 2021. Accordingly, the Applicant was not in U-3 nonimmigrant status at the time of filing her U adjustment application, as required under 8 C.F.R. § 245.24(b)(2)(ii), and her U adjustment application must remain denied.²

ORDER: The appeal is dismissed.

¹ Additionally, the DOS website provides the following information: "If you came to the United States on a nonimmigrant visa and you want to extend your stay you must apply with USCIS before your authorized stay, denoted on your admission stamp or paper Form I-94, expires. It is recommended you apply well in advance of your expiration date." *What the Visa Expiration Date Means*, U.S. Department of State Bureau of Consular Affairs (Apr. 24, 2023), <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visa-expiration-date.html>.

² The Form I-797C for the Applicant's U adjustment application provides "If your [U nonimmigrant] status was no longer valid by the date your Form I-485 was received, you will need to file the Application to Extend/Change Nonimmigrant Status (Form I-539) with this office to request an extension of your nonimmigrant status." Should USCIS approve an extension of the Applicant's U nonimmigrant status at some future date, our decision is without prejudice to any future action related to this U adjustment application or a new filing.