



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

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

In Re: 24727533

Date: FEB. 8, 2023

Appeal of Nebraska Service Center 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 his “U” nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. 8 C.F.R. § 103.3. 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.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR provided that he is: not inadmissible under section 212(a)(3)(E) of the Act; has been continuously physically present in the United States for at least three years since the date of admission as a U nonimmigrant; and establishes that his 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. 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).

II. ANALYSIS

The Applicant, a native and citizen of El Salvador, was granted U-3 status from January 2017 until January 2021, and timely filed the instant U adjustment application in December 2020. In July 2021, the Director issued a request for evidence (RFE), providing the Applicant an opportunity to submit the following:

- Legible copies of all pages, from cover to cover, of all passports that were valid during the period in U nonimmigrant status;
- A self-affidavit attesting to the Applicant’s continuous physical presence in the United States for at least three years since admission as a U nonimmigrant;
- Evidence establishing continuous physical presence in the United States for a period of at least three years from January 2017 through the date of adjudication of the U adjustment application;

- Evidence establishing the Applicant did not unreasonably refuse to provide assistance to law enforcement in the criminal investigation or prosecution for the qualifying criminal activity;
- A copy of the Applicant's birth certificate along with a certified English translation;
- Evidence of the qualifying relationship; and
- Form I-693, Report of Medical Examination and Vaccination Record (medical examination report), in an envelope sealed by the Civil Surgeon's office.

In response to the RFE, the Applicant explained, through counsel, that he was unable to comply with the documentation request due to financial hardships. The Director denied the application, determining that the Applicant had not satisfied the evidentiary requirements for adjustment of status to that of an LPR under section 245(m) of the Act.

On appeal, the Applicant asserts that he has recovered from the financial hardships and has submitted all the requested documentation, including the following:

- Copy of the Applicant's birth certificate along with a certified English translation;
- Applicant's statement;
- Copies of all pages of his passport, valid April 2022 to April 2028;
- Copy of [redacted] unofficial transcript;
- Copy of lease agreement dated January 6, 2022;
- Letter from [redacted] confirming the Applicant's participation in the [redacted] Discipleship program from April 2018 through November 2019; and
- A medical examination report.

A. Medical Examination Report

In accordance with section 232(b) of the Act, and as implemented by regulation, all applicants for adjustment of status are "required to 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" applicable health-related grounds of inadmissibility, "shall be incorporated into the record." 8 C.F.R. § 245.5; *see also* section 212(a)(1) of the Act (articulating the health-related inadmissibility grounds).¹

Both USCIS policy and the relevant form instructions reiterate this requirement. *See* 8 USCIS Policy Manual B.3(A), <http://www.uscis.gov/-policymanual> (indicating all adjustment applicants must submit a medical examination report); USCIS Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 3-4 (listing the evidence that must be filed with the adjustment application and including the requirement that applicants submit a medical examination report).² Form instructions carry the weight of binding regulations. *See* 8 C.F.R. § 103.2(a)(1) ("Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions The form's instructions are hereby incorporated into the regulations requiring its

¹ The regulations provide for limited exceptions to this rule not applicable here. *See* 8 C.F.R. § 245.5 (exempting those who "entered the United States as a nonimmigrant spouse, fiancé, or fiancée of a United States citizen or the child of such [an individual and were] medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa").

² The instructions similarly indicate certain classes of individuals who are exempted from this requirement, none of which are applicable here.

submission.”); *see also* 8 C.F.R. § 245.24(d)(1) (stating that each applicant for U-based adjustment of status must submit a U adjustment application “in accordance with the form instructions”).

On appeal, the Applicant submits the required medical examination report. Accordingly, he has partially overcome the Director’s grounds for denial of his U adjustment application. However, as explained below, the record, including that submitted on appeal, remains insufficient to establish his eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

B. 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 his admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act. To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, a photocopy of all pages of all passports that were valid during the required period, or an equivalent travel document or explanation of why he or she does not have a passport, as well as documentation and information regarding departures and arrivals from the United States while in U status. 8 C.F.R. § 245.24(d)(5). In addition, to establish continuous physical presence for the requisite period, relevant regulations require that the applicant submit, *inter alia*, “a signed statement . . . attesting to continuous physical presence” and “additional documentation.” 8 C.F.R. § 245.24(d)(9).

On appeal, the Applicant submits a statement and numerous documents relevant to his continuous physical presence in the United States since his grant of U nonimmigrant status in January 2017. Educational records establish that the Applicant attended classes at [REDACTED] in 2017, 2019, 2020 and 2021. In addition, the Applicant submitted a letter from [REDACTED] the executive director of [REDACTED] confirming his participation in the [REDACTED] Discipleship program from April 2018 through November 2019. The January 2022 lease agreement in the record identifies the Applicant as a tenant in a house in [REDACTED] California; however, it indicated only a month-to-month tenancy. No further evidence was submitted establishing the actual length of the tenancy.

Despite this evidence supporting the Applicant’s claim that he has been continuously physically present in the United States for a period of three years since the date of his admission as a U nonimmigrant in January 2017. Here, the requirements at 8 C.F.R. §§ 245.24(d)(5) and (d)(9) are not satisfied. We acknowledge the Applicant’s submission of a statement on appeal. However, this statement does not specifically address his continuous physical presence in the United States for at least three years since his admission as a U nonimmigrant as required by 8 C.F.R. § 245.24(d)(9). Moreover, the Applicant’s passport, while indicating that he did not leave the United States after April 2022, does not speak to his continuous physical presence from January 2017 until the submission of his U adjustment application in December 2020. As such, the record lacks a copy of the Applicant’s passport that was valid during the required period or an explanation regarding why he did not have a passport, as required by 8 C.F.R. § 245.24(d)(5).³

³ In light of this finding, we need not address whether the record contains sufficient evidence to establish, by a preponderance of the evidence, that the Applicant did not unreasonably refuse to provide assistance to law enforcement in the criminal investigation or prosecution for the qualifying criminal activity.

Consequently, the Applicant has not satisfied the evidentiary requirements for adjustment of status to that of an LPR under section 245(m) of the Act.

III. CONCLUSION

The Applicant has partially overcome the grounds for denial of his U adjustment application; however, the record, including that submitted on appeal, remains insufficient to establish his eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.