U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25385276

Date: FEB. 28, 2023

Appeal of Vermont Service Center Decision

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

The Applicant seeks to adjust her status to that of 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 Applicant's Form I-485, Application to Adjust Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. 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, she has 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 her 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, a citizen of El Salvador, was granted U nonimmigrant status from December 16, 2016, to December 15, 2020. She filed the instant U adjustment application on January 25, 2021. The Director concluded that the Applicant did not continue to hold U nonimmigrant status at the time she filed her U adjustment application and, accordingly, could not establish her eligibility for U-based adjustment of status.

On appeal, the Applicant asserts, through counsel, that she mailed an initial U adjustment application on December 3, 2020, and that it was received by USCIS well before December 15, 2020.[1] The Applicant concedes, however, that the initial U adjustment application was rejected. The record contains a Form I-797, Notice of Action, dated December 30, 2020, stating that the U adjustment application was rejected because "proof of the underlying pending or approved immigrant/non-immigrant visa petition which would make a visa immediately available to you has not been included

[1] A review of the record indicates that USCIS received the initial U adjustment application on December 14, 2020.

with your filing." Counsel states that the Applicant did not have the U approval notice and needed to "reach out to the non-profit organization that had initially assisted her in her U visa application process." The Applicant subsequently re-filed her application and received a receipt notice date of January 25, 2021.

In light of her explanation above, the Applicant requests that USCIS consider her U adjustment application timely filed. She argues that she could not have "reasonably known that a single error in an application packet, comprised of over 100 pages, would result in the rejection of the application . . . ." She further argues that USCIS sometimes issues requests for evidence in these situations instead of returning the whole application, and that proof of her U visa status was included within the initial application itself. However, the Applicant does not describe the type of proof included therein.

Our review of the record reveals that USCIS properly rejected the filing of the Applicant's initial U adjustment application because she filed her application without the required U approval notice. Applications that are rejected by USCIS do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii). The Applicant did not file for an extension of her U nonimmigrant status; instead, she filed her current U adjustment application on January 25, 2021, after her U nonimmigrant status expired. USCIS considers applications "received" as of "the actual date of receipt at the location designated for filing." 8 C.F.R. § 103.2(a)(7)(i). Consequently, the Applicant was not in U nonimmigrant status when she filed her U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Although we recognize the hardship to the Applicant and her family that this result may cause, we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry "the force and effect of law"). Accordingly, the Applicant is ineligible for adjustment of status to that of an LPR under section 245(m) of the Act and the application will remain denied.[2]

ORDER: The appeal is dismissed.

[2] This decision is without prejudice to the filing of a new U adjustment application should the Applicant request, and receive approval of, an extension of her U nonimmigrant status.