



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

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

In Re: 23925245

Date: JAN. 03, 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 application, concluding that the record did not establish that the Applicant had shown that he held U nonimmigrant status at the time of filing his Form I-485, Application for Adjustment of Status (U adjustment application), as required. 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.

To be eligible for adjustment of status as a U nonimmigrant, the applicant must demonstrate, among other eligibility criteria, that they were lawfully admitted to the United States as a U nonimmigrant and continue to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii).

The Applicant, a citizen of Mexico, was admitted to the United States as a U nonimmigrant on April 14, 2018, until July 17, 2020, after receiving approval of his I-918A, Petition for Qualifying Family Member of U-1 Recipient (Form I-918A). He filed the instant U adjustment application on August 9, 2021. The Director concluded that the Applicant did not continue to hold U nonimmigrant status at the time he filed his U adjustment application and, accordingly, could not establish his eligibility for U-based adjustment of status.

On appeal, the Applicant asserts that he was in valid U nonimmigrant status at the time of his application. In a brief, he argues that his U nonimmigrant status was valid until March 12, 2022. The Applicant states that his Form I-918A approval notice, which he acknowledges does not grant nonimmigrant status, indicates that the approval is valid from March 13, 2018, to March 12, 2022, and that the recipient “will be eligible to apply for work authorization for the validity of their nonimmigrant status.” He states that his employment authorization document was also valid until March 12, 2022, which he submits shows that he was in valid status and therefore legal nonimmigrant status until that date. Furthermore, the Applicant contends that the visa on his passport expires March 12, 2022. He

therefore claims that he has met this requirement for U nonimmigrant status. In support of this argument, he submits a copy of his passport, his employment authorization document, the approval notice for his employment authorization document, the approval notice for a U adjustment application for the Applicant's mother, and the Applicant's approval notice for Form I-918A.

Upon review of the record, including as supplemented on appeal, we find no error in the Director's determination that the Applicant did not hold U nonimmigrant status at the time of his application, as required. As indicated on his passport, he was admitted to the United States as a U nonimmigrant on April 14, 2018, with authorization to remain until July 17, 2020. The record does not indicate, nor does the Applicant claim, that he filed for an extension of his U nonimmigrant status. As he acknowledges on appeal, the notices issued to the Applicant do not indicate that he was granted nonimmigrant status for any other period. Although the Applicant argues that his employment authorization is valid until March 12, 2022, this has no bearing on the validity of his nonimmigrant status. Indeed, the Applicant cites no authority for interpreting the dates of employment authorization or approval of his I-918A as meeting the requirement for valid U nonimmigrant status.

A derivative family member who is outside of the United States at the time his U petition is approved does not obtain U status until his entry and admission into the United States on a U visa. 8 C.F.R. § 214.14(f)(6)(ii) ("When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval . . . [and] forward the approved [petition] to the [DOS]...") 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." *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 FR 53014-01. 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 53028. The Applicant's period of U nonimmigrant status was determined at the time of her admission into the United States. U.S. Customs and Border Protection (CBP) explains that upon a foreign national's arrival in the United States, CBP stamps the travel document of each nonimmigrant traveler with the admission date, class of admission, and the date until which the traveler is admitted. U.S. Customs and Border Protection, <https://www.cbp.gov/travel/international-visitors/i-94>.

Here, the Applicant's status expired on July 17, 2020, prior to the filing of his U adjustment application. Accordingly, the Applicant was not in U nonimmigrant status at the time of filing, as required under 8 C.F.R. § 245.24(b)(2)(ii). He was therefore not eligible for adjustment of status to that of an LPR under section 245(m) of the Act. 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 his U nonimmigrant status.

**ORDER:** The appeal is dismissed.