



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

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

In Re: 27258687

Date: JUL. 11, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

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 Vermont Service Center denied the application, concluding that the record did not establish that the Applicant had satisfied the requirements found at 8 C.F.R. § 245.24(d)(5), as he did not provide a photocopy of all pages of all passports valid since his date of admission as a U nonimmigrant, and that the Applicant did not submit a personal statement attesting to his continuous physical presence during his U nonimmigrant status. 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

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 a lawful permanent resident provided that the applicant “has 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 establishes 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.

To demonstrate continuous physical presence, a U adjustment applicant must provide a photocopy of all pages of all passports valid since the date of their admission as a U nonimmigrant or, in the alternative, an equivalent travel document or a valid explanation of why they do not have a passport, and an affidavit from the applicant attesting to their continuous physical presence for at least 3 years since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the application for adjustment of status. 8 C.F.R. § 245.24(a)(1), (d)(5) and (9).

The Applicant, a native and citizen of Mexico, was granted U-3 nonimmigrant status from January 2017 to January 2021. He filed the instant U adjustment application in September 2020. The Director denied the application, finding that the Applicant had not complied with the requirements of 8 C.F.R. § 245.24(d)(5) and (9). Specifically, the Director noted that the record did not contain copies of all pages of his expired passport, which was valid from April 2013 to April 2019. Further, the Director noted that the Applicant had not provided a signed personal statement attesting to his continuous physical presence for 3 years, as defined at 8 C.F.R. § 245.24(a)(1).

The Applicant then filed combined motions to reopen and reconsider the Director's decision. With his motions, the Applicant submitted additional evidence which the Director noted included a full copy of the Applicant's expired passport, valid from April 2013 to April 2019; however, the Director dismissed the motions, and stated that the copy of the Applicant's current passport, valid from July 2020 to July 2026, was illegible, and the personal statement regarding his continuous physical presence was not signed.

The Applicant filed subsequent combined motions to reopen and reconsider. With his motions, the Applicant again submitted additional evidence. The Director's decision on these motions noted an error in the initial decision on the combined motions, as they determined that the Applicant's personal statement contained a signature on the following page. The Director dismissed the motions, stating, "the agency now realizes [his] signature was on the following page. Therefore the only shortcoming warranting the denial of [his] Form I-485 was the current illegible passport," and noted that his motions did not meet the requirements, as they were not timely filed as required by 8 C.F.R. § 103.8(a)(1)(i).

On appeal, the Applicant again submits complete copies of both passports, an additional personal statement, and additional evidence attesting to his continuous physical presence. In our de novo review, we note that the initial decision on the Applicant's U adjustment application did not state that the copies of his current passport were deficient or illegible, and only noted that the record lacked a full copy of his expired passport, and a signed personal statement regarding his continuous physical presence. In our review of the record, we determine that the record contained the full and complete copy of the Applicant's current passport, valid from July 2020 to July 2026, which the Applicant provided in response to the Director's request for evidence, and the Applicant provided a copy of his expired passport with his combined motions before the Director. Further, the Director acknowledged the error in the determination that the Applicant's personal statement regarding his continuous presence was not signed. As such, we determine that the Applicant has satisfied the requirements found at 8 C.F.R. § 245.24(d)(5) and (9). Because the Applicant has overcome the grounds for denial of his U adjustment application on appeal, we remand the matter to the Director to consider whether he has otherwise established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.¹

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

¹ While the Applicant has not overcome the Director's determination that his second combined motions filing was untimely, it is appropriate to remand the case, as the Director's decisions contained factual errors.