U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24665153

Date: MAR. 1, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust 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 her "U" nonimmigrant status. The Director of the Vermont Service Center (Director) 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. 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.

I. LAW

A U nonimmigrant may adjust status to that of an LPR at the discretion of U.S. Citizenship and Immigration Services (USCIS) unless USCIS determines, based on affirmative evidence, that the U adjustment applicant unreasonably refused to provide assistance in a criminal investigation or prosecution. Section 245(m) of the Act. To establish eligibility, the applicant must demonstrate that since being granted U nonimmigrant status, they have not unreasonably refused to provide assistance in the investigation or prosecution of the qualifying criminal activity that formed the basis of the underlying U nonimmigrant status. 8 C.F.R. § 245.24(a)(5), (b)(5). The applicant may submit, as supporting evidence, a newly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), or a signed statement from a law enforcement agency or official affirming that they complied with, or did not unreasonably refuse to comply with, reasonable requests for assistance in the investigation or prosecution during the requisite period. 8 C.F.R. § 245.24(e)(1). If the applicant does not submit a newly executed Supplement B or signed statement as described above, they should submit an affidavit describing efforts to obtain such evidence. 8 C.F.R. § 245.24(e)(2). An applicant may submit any credible evidence for us to consider in our de novo review; however, we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a native and citizen of Guatemala, entered the United States without inspection in April 1999. She filed a Form I-918, Petition for U Nonimmigrant Status, in November 2013 with a Supplement B, from the police chief of the [redacted] Police Department. The Applicant was granted U nonimmigrant status from May 2017, until May 2021. The Applicant filed her U adjustment application in September 2020. The Director issued a request for evidence (RFE) seeking missing documentation required to process the U adjustment application. As part of the RFE, the Director requested evidence to establish that since the Applicant's admission as a U nonimmigrant, she has not unreasonably refused to provide assistance to law enforcement in a federal, state or local criminal investigation or prosecution for the qualifying criminal activity upon which the U nonimmigrant status was based. The Applicant did not provide evidence of this requirement in response to the RFE. Instead, the Applicant argued that based on section 245(m) of the Act, the Director was required to present affirmative evidence that she unreasonably refused to provide assistance to law enforcement officials, as a precondition to requiring the Applicant to establish that she had not unreasonably refused to provide assistance. Otherwise, she argued, the Director placed the burden on her to prove something that did not exist. The Director denied the U adjustment application after determining that the Applicant failed to demonstrate that she had not unreasonably refused to provide assistance in the criminal investigation or prosecution since being granted U nonimmigrant status.

On appeal, the Applicant submits a February 2013 letter from the [redacted] County State Attorney informing the Applicant that criminal charges were filed against the perpetrator; a [redacted] 2013 Order Finding Probable Cause from the County Court Judge in [redacted] County which states in part that the Applicant's testimony was presented at the adversarial preliminary hearing; and a [redacted] 2013 Notice of Taking Deposition from an Assistant Public Defender in [redacted] County which indicates that the Applicant was scheduled to be deposed at the [redacted] County Courthouse. The Applicant asserts that because there was no affirmative evidence showing that she unreasonably refused to provide assistance in the investigation or prosecution of the felonious assault committed against her, and the statute and regulations require affirmative evidence that an applicant unreasonably refused to provide assistance in a criminal investigation or prosecution in order to deny the U adjustment application, the Director erred in denying her U adjustment application. However, the Preamble to the U adjustment rule does not support such a reading of the Act and regulations. *See* 73 Fed. Reg. 75540, 75546-48 (Dec. 12, 2008) (requiring an applicant to provide evidence that he or she did not unreasonably refuse to provide assistance in the investigation or prosecution of the qualifying crime and clarifying that it is the applicant's burden to provide affirmative evidence of his or her continued assistance to law enforcement in the investigation or prosecution of the qualifying criminal activity); *see also* 8 C.F.R. § 245.24(e)(1) and (2) (requiring affirmative evidence establishing the applicant's continuing assistance to law enforcement in the investigation or prosecution of the qualifying criminal activity).

As stated above, 8 C.F.R. § 245.24(b)(5) provides that eligibility for adjustment of status under section 245(m) of the Act requires U nonimmigrants, like the Applicant, to demonstrate that she "[h]as not unreasonably refused to provide assistance . . . in an investigation or prosecution . . . in connection with the qualifying criminal activity *after* [emphasis added] [she] was granted U nonimmigrant status . . . ." While the certifying official previously certified that the Applicant did not unreasonably refuse to provide assistance as related to her underlying U petition and prior to being accorded U-1 status,

the evidence does not demonstrate that the Applicant has not unreasonably refused to provide continued assistance since the grant of such status, as required. Moreover, while the Applicant's counsel asserts "[t]he attached evidence shows that the applicant did cooperate with the authorities to prosecute the assailant who attacked her and her son," counsel's assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's assertions must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, the Applicant has not submitted a newly executed document from the law enforcement agency or official responsible for the investigation or prosecution of the qualifying crime or an affidavit describing her efforts to obtain such document or otherwise describing whether or not she received further requests for assistance from law enforcement. Accordingly, she has not met her burden of establishing that she did not unreasonably refuse to provide assistance in the investigation or prosecution of the underlying qualifying criminal activity upon which her grant of U nonimmigrant status was based, as section 245(m)(1) of the Act and 8 C.F.R. § 245.24(b)(5) require. Therefore, the Applicant is ineligible to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.