



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

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

In Re: 25985826

Date: MAR. 28, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant 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 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.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if the applicant establishes, among other requirements, that they were admitted to the United States as a U nonimmigrant. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(2)(i). The applicant must also demonstrate that they continue to hold such status at the time of application for adjustment of status. 8 C.F.R. § 245.24(b)(2)(ii). 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).

The Applicant is a citizen of Ecuador. The Applicant’s mother filed a derivative U petition on his behalf, and USCIS approved the petition from February 16, 2017, to February 15, 2021. The Applicant was in Ecuador at the time his U petition was approved, and he subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). DOS issued the Applicant’s visa on August 7, 2017, with an expiration date of February 15, 2021. The Applicant first entered the United States on August 24, 2017, and U.S. Customs and Border Protection admitted him in U status until February 15, 2021. The record also indicates that the Applicant has not filed a Form I-539, Application to Extend/Change Nonimmigrant Status, to extend his U-3 status. The Applicant filed his U adjustment application on February 22, 2021, and the Director denied the application because the Applicant was no longer in U nonimmigrant status on the filing date.

On appeal, the Applicant asserts, through counsel, that he mailed his U adjustment application on February 11, 2021, and that it was received by USCIS on February 15, 2021. The Applicant submitted a copy of a shipping label receipt, indicating the label was printed on February 11, 2021. The Applicant explains that the United States Postal Service (USPS) tracking records are no longer available because USPS holds records for tracking service up to 120 days or four months. While we

acknowledge counsel's explanation of events, assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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 statements must be substantiated in the record with independent evidence. The Applicant has not submitted sufficient documentation to support these claims, specifically the evidence does not establish the date that USPS received the package, or the date USPS delivered the package.

Immigration regulations prescribe that the filing date of a benefit request is the date that USCIS receives the request at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i). Here, the Applicant's U nonimmigrant status expired on February 15, 2021, and USCIS did not receive the U adjustment application until February 22, 2021. As such, the Director properly determined that the Applicant is not eligible for U adjustment of status because he did not hold U nonimmigrant status at the time of filing.

The Applicant is seeking adjustment of status as a U nonimmigrant under section 245(m) of the Act, which has no exception to the filing requirements. The implementing regulations require an applicant to establish that they were lawfully admitted to the United States as a U nonimmigrant and continues to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii). The statutory and regulatory requirement that a U adjustment applicant be in U nonimmigrant status at the time of filing is a substantive eligibility requirement that we may not disregard. *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

As the Applicant was not in U nonimmigrant status when he filed his U adjustment application as required, he has not established his eligibility for lawful permanent residence under section 245(m) of the Act.¹

ORDER: The appeal is dismissed.

¹ This decision is without prejudice to the filing of a new U adjustment application after the approval of an extension should the Applicant file a Form I-539, Application to Extend Nonimmigrant Status. *See* USCIS Policy Memorandum USCIS PM-602-0032.2, Extension of Status for T and U Nonimmigrants (Corrected and Reissued) 4, 9 (Oct. 4, 2016), <https://www.uscis.gov/legal-resources/policy-memoranda>.