



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

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

In Re: 26665856

Date: MAY 24, 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) based on their “U” nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U nonimmigrant classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director of the Vermont Service Center denied the Form I-485, Application to Adjust Status of U Nonimmigrant (U adjustment application), concluding that the Applicant did not submit a valid and complete Form I-693, Report of Medical Examination and Vaccination Record (medical examination), 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of a lawful permanent resident (LPR) based on having been granted U status. In addition, an applicant for adjustment of status under 245(m) must comply with the general eligibility and documentary requirements to adjust status at 8 C.F.R. § 245.5, which requires that the applicant “have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.”

The Director stated that the Applicant, who is 50 years old, did not include a medical examination with her U adjustment application. A request for evidence (RFE) was issued for the medical examination and other pieces of evidence, and the Applicant responded to the RFE with evidence including, but not limited to, a medical examination. However, the civil surgeon checked the “Not Age-Appropriate” box on page 12 of the medical examination for the Hepatitis B, DTaP, and Tdap vaccines, although a vaccination date was listed for the DTaP vaccine. The Director noted that Center

for Disease Control technical instructions reflect that the Hepatitis B and Tdap vaccines are required for individuals in the Applicant's age group. Therefore, the Director denied the U adjustment application as the Applicant did not submit a valid and complete medical examination.

The Applicant has submitted a new medical examination on appeal. The Applicant has overcome the basis for denial, as she has submitted a new medical examination which reflects she has received the Hepatitis B and Tdap vaccines.<sup>1</sup> The Director did not otherwise determine whether the Applicant satisfied the remaining eligibility criteria at section 245(m) of the Act, including whether her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and, accordingly, whether a favorable exercise of discretion is warranted. Because the only ground for denial of the Applicant's U adjustment application has been overcome on appeal, the matter will be remanded for the issuance of a new decision.

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

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<sup>1</sup> Center for Disease Control technical instructions reflect that the Applicant is not required to receive the DTP/DTaP/DT vaccines. *Vaccine Requirements According to Applicant Age*, <https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/vaccinations.html#tbl1>. Therefore, the civil surgeon did not list a received date for these and correctly marked "Not Age-Appropriate" on the newly submitted medical examination.