



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

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

In Re: 27859719

Date: SEPT. 7, 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 Form I-485, Application for Adjustment of Status (U adjustment application), concluding that the Applicant did not establish eligibility to adjust his status because he did not provide all documentation required by the regulations, as requested. 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 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 may adjust the status of a U nonimmigrant to that of an LPR if, among other eligibility requirements, he has been physically present in the United States for a continuous period of three years since the date of his admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act. To demonstrate continuous physical presence, a U adjustment applicant must provide certain evidence required by regulations, which includes an affidavit from the applicant that he has continuous physical presence in the United States for at least three years. 8 C.F.R. § 245.24(d)(9); 8 C.F.R. § 245.22.

The Applicant is a citizen of Guatemala who was granted U nonimmigrant status from March 2018 through March 29, 2022. He timely filed the instant U adjustment application in June 2021. The Director subsequently issued a request for evidence (RFE) asking the Applicant to submit, in part, evidence that he has been continuously physically present in the United States for three years since March 2018, including a self-affidavit attesting that he maintained continuous physical presence in the United States for at least three years since he was granted U nonimmigrant status. Because the Applicant did not include such affidavit with his response to the RFE, the Director determined that the Applicant did not meet the criteria for adjustment of status under section 245(m) of the Act and denied his U adjustment application.

To overcome this adverse determination, the Applicant submits a brief, a signed statement attesting to his continuous physical presence in the United States since “March 2018 to the present”; letters from his current and past employers and co-workers; his child’s school records and 2019-2022 tax documents; a church letter, and an affidavit from his landlady. He explains that he did not previously submit a statement concerning his continuous physical presence in the United States because he understood the RFE to mean that such statement was only required if other types of evidence of his physical presence were not available.

Because the Applicant has now provided an affidavit attesting to his continuous physical presence for at least three years after the grant of U nonimmigrant status, the sole ground for denial of his U adjustment application has been overcome. We will therefore remand the matter to the Director to consider whether the Applicant has otherwise established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

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