U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27944854

Date: SEP. 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 held valid U nonimmigrant status at the time he filed his Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). 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 dismiss the appeal.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other 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 and his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant "continue[] to hold such status at the time of [the filing of the U adjustment] application . . . ." 8 C.F.R. § 245.24(b)(2)(ii).

The Applicant, a native and citizen of Mexico, filed his Form I-918, Petition for U Nonimmigrant Status (U petition), in November 2013, and the U petition was approved in December 2016. As the Applicant was outside of the United States, his petition was sent for consular processing and USCIS records indicate that he was admitted to the United States in U-1 nonimmigrant status in July 2017, and his status was valid until December 2020. The Applicant filed an initial U adjustment application in December 2019, which was denied by the Director, as the Applicant had not established that he met the continuous physical presence requirement. Following the denial of the first U adjustment application, the Applicant filed the instant U adjustment application in May 2021. After review, the Director denied the application, concluding that as the Applicant's U nonimmigrant status expired in

December 2020, he did not hold U nonimmigrant status at the time he filed his U adjustment application.

On appeal, the Applicant submits a brief. In his brief, he contends that per the the Form I-539, Application to Extend/Change Nonimmigrant Status instructions, "[e]xtensions of U nonimmigrant status based on the filing of Form I-485 . . . do not require the filing of Form I-539. U nonimmigrant status is automatically extended when the Form I-485 is filed." He argues that as a result, his status was extended when he filed his first U adjustment application and a subsequent motion to reconsider the Director's denial of that application. Pursuant to section 214(p)(6) of the Act, USCIS must extend an applicant's U nonimmigrant status until a decision is reached on the related U adjustment application, if the applicant was still in valid U nonimmigrant status on the date the U adjustment application was filed. However, the Director dismissed the Applicant's motion to reconsider in January 2021, and as his U adjustment application and motion to reconsider were closed, the Applicant received no further extension of his status. The Applicant did not file a subsequent U adjustment application until May 2021, after any extension of his status relating to the pendency of his first U adjustment application had expired.[1] Consequently, the Applicant was not in U nonimmigrant status when he filed the U adjustment application now before us on appeal, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Although we recognize the hardship to the Applicant and his family that this result may cause, we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry "the force and effect of law"). Accordingly, he is not eligible for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.

[1] A review of USCIS records indicates that the Applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status, in April 2023. This decision is without prejudice to the filing of a new U adjustment application should he receive approval of an extension of his U nonimmigrant status.