



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

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

In Re: 28162780

Date: SEP. 21, 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 based on her “U” nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m).

The Director of the Vermont Service Center denied the application, concluding that the record did not establish that she had three years of continuous physical presence at the time she filed her 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 “admitted into the United States . . . under section 101(a)(15)(U) [of the Act]” to that of a lawful permanent resident provided that she “has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant” and otherwise establishes that her “continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.” Section 245(m)(1) of the Act.

Implementing regulations require a U adjustment applicant to establish, among other requirements, that she “[w]as lawfully admitted to the United States” as a U nonimmigrant, she “[c]ontinues to hold such status at the time of application,” and she “[h]as continuous physical presence for 3 years” in the United States. 8 C.F.R. § 245.24(b)(2)(i)-(ii), (b)(3).

The Applicant was granted U nonimmigrant status from November 2017 until November 2021. Less than three years later, in October 2020, she filed her U adjustment application. The Director determined that the Applicant was not eligible to adjust her status to that of a lawful permanent resident because, at the time of filing her U adjustment application, she did not demonstrate her physical

presence in the United States for a continuous period of at least three years since her admission as a U nonimmigrant.

On appeal, the Applicant does not contest the Director's decision. Rather, she submits additional evidence regarding her continuous physical presence to cover the period from November 2017, until the submission of her appeal in March 2023. As a threshold requirement, an applicant must be eligible for the requested benefit at the time of filing the application. 8 C.F.R. § 103.2(b)(1). When filing for adjustment of status, a U nonimmigrant must have been in valid U status for at least three years since the date of admission as a U nonimmigrant. *See* section 245(m)(1)(A) of the Act (stating that an individual must have "been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant"); 8 C.F.R. § 245.24(a)(1) (stating that continuous physical presence "means the period of time that the [individual] has been physically present in the United States and must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant"), 245.24(d)(9) (stating that a U adjustment application must include, in part, "an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years"). This requirement is reiterated in the relevant form instructions. *See* Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 30 (providing that "[b]oth principal and derivative applicants may file [a U adjustment application] only after they have been physically present in the United States for a continuous period of at least three years since being admitted as a U nonimmigrant"); *see also* 8 C.F.R. § 103.2(a)(1) (requiring that benefit requests must comply with form instructions, which are incorporated into the regulations).

Here, the Applicant was not physically present in the United States for a continuous period of at least three years since the date of her admission as a U nonimmigrant until November 17, 2020. She filed her U adjustment application on October 19, 2020, approximately one month prior to that date. Neither the statute nor the regulations provide for an exception to the requirement that an applicant be in lawful U status for at least three years at the time of filing. While we acknowledge the hardship to the Applicant that this may cause, we lack the authority to waive or disregard any of the Act's requirements, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695 (1974) ("So long as this regulation is extant it has the force of law."). Although the Applicant has submitted numerous documents reflecting her continuous presence in the United States while she was in U status, at the time of filing her U adjustment application, she was not in U nonimmigrant status for at least three years since her admission as a U nonimmigrant, as required.

ORDER: The appeal is dismissed.