



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

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

In Re: 21898883

Date: APR. 7, 2022

Appeal of Nebraska 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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (adjustment application), concluding that the Applicant did not continue to hold U nonimmigrant status at the time he filed his U adjustment application, as required. The matter is now before us on appeal. Upon *de novo* review, as explained below, we will dismiss the appeal.

I. LAW

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 establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant filed a Form I-918, Petition for U Nonimmigrant Status (U petition), in January of 2014 which was approved, with validity dates from March 18, 2017, to March 17, 2021. Through counsel, the Applicant submitted his adjustment application and his spouse’s adjustment application to the Nebraska Service Center on March 11, 2021. The Nebraska Service Center rejected and returned the submission because it was not within the service center’s jurisdiction. On April 8, 2021, the Applicant resubmitted his adjustment application to the Nebraska Service Center, stating that he separated the applications and that his adjustment application was ripe for adjudication. The Director of the Nebraska Service Center denied the application because the Applicant was no longer in U nonimmigrant status on the filing date, April 8, 2021, and was therefore ineligible to adjust status.

On appeal, the Applicant contends that his initial submission was wrongfully returned. He states that his adjustment application was timely and properly filed to the correct service center with the correct fees. He claims that not using the March 11, 2021, receipt date will cause irreparable harm and is fundamentally unfair since his application was properly filed.

We have no jurisdiction to review the Director's decision to reject the entirety of the Applicant's March 11, 2021, submission and we lack the authority to waive or disregard the requirements of the Act and implementing regulations. *See* C.F.R. § 103.2(a)(7)(iii) ("A rejection of a filing with USCIS may not be appealed."); *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). Here, the Applicant, who lives in Texas, must file his adjustment application with the Nebraska Service Center, and his spouse, as a derivative, must file her adjustment application with the Vermont Service Center, as indicated in the form instructions which have the weight of regulations. *See* 8 C.F.R. § 103.2(a)(1). In addition, we note that "[a] benefit request which is rejected will not retain a filing date." *See* C.F.R. § 103.2(a)(7)(ii). The Applicant's adjustment application was not filed until April 8, 2021, after his U nonimmigrant status had expired. Accordingly, the Applicant was not in U nonimmigrant status at the time of filing, as required under 8 C.F.R. § 245.24(b)(2)(ii), and he is therefore ineligible for adjustment of status under section 245(m) of the Act.¹

ORDER: The appeal is dismissed.

¹ USCIS regulations provide for the extension of a U nonimmigrant visa by filing a Form I-539, Application to Extend/Change Nonimmigrant Status. *See* 8 C.F.R. §§ 214.14(g)(2)(i) and (ii). Per USCIS policy, "[i]n the case of an untimely [extension of status application] filed after U nonimmigrant status has expired, [an approved] extension will be valid from the date the previous status expired and . . . the applicant will continue in valid U nonimmigrant status with all the associated rights, privileges, and responsibilities." USCIS Policy Memorandum USCIS PM-602-0032.2, Extension of Status for T and U Nonimmigrants (Corrected and Reissued) 3-4, 10 (Oct. 4, 2016), <https://www.uscis.gov/laws/policy-memoranda>. This decision is without prejudice to the filing of a new Form I-485 adjustment application if the Applicant is granted an extension of his U nonimmigrant status upon the proper filing of a Form I-539.