



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

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

In Re: 21561769

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 her “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 she filed her adjustment application, as required. The Director also dismissed a subsequent motion to reopen and reconsider, upholding her previous decision. 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 November of 2013 which was approved in December of 2016, with validity dates from December 15, 2016, to December 14, 2020. Through counsel, the Applicant, who lives in California, submitted her adjustment application to the Vermont Service Center in November of 2020. By notice dated November 20, 2020, the Vermont Service Center rejected and returned the submission to the Applicant, informing her that her application is not processed at this service center. On December 10, 2020, the Applicant resubmitted the adjustment application to the Vermont Service Center, which again rejected and returned the submission because the application is not processed at this service center. On December 28, 2020, the Applicant filed her adjustment application with the Nebraska Service Center. The Director of the Nebraska Service Center denied the application because the

Applicant was no longer in U nonimmigrant status on the filing date and was, therefore, ineligible to adjust status.

The Applicant filed a motion to reopen and reconsider to the Director, arguing that she timely filed her application on November 5, 2020, which was rejected, and that due to an inadvertent error, she subsequently sent the application to the wrong service center. She states that she corrected the mistake as soon as she was made aware of it. The Director of the Nebraska Service Center dismissed the motion, concluding that the adjustment application was not received until December 28, 2020, when the Applicant was no longer in U nonimmigrant status. The Director noted that the Applicant had not filed a Form I-539, Application to Extend/Change Nonimmigrant Status.

On appeal, the Applicant repeats her argument that she timely filed her adjustment application on November 5, 2020, which was rejected, and that she again timely filed her adjustment application on December 2, 2020, but due to an inadvertent error, sent the application to the wrong service center. The Applicant contends that the error was not deliberately made and that she had the full intent of filing her adjustment application before her U nonimmigrant status expired. In addition, she states that she is currently filing a Form I-539 and that once that application is approved, she will be able to adjust her status to that of an LPR.

We find no error in the Director's decisions to deny the adjustment application. As the regulations make clear, "[e]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions" which have the weight of regulations. *See* 8 C.F.R. § 103.2(a)(1). Moreover, "USCIS will consider a benefit request received and will record the receipt date as of the *actual date of receipt at the location designated* for filing such benefit request [and a] benefit request which is rejected will not retain a filing date." *See* C.F.R. § 103.2(a)(7) (emphasis added). Here, because the Applicant lives in California, her adjustment application must be filed with the Nebraska Service Center, as indicated in the form instructions. The Applicant's adjustment application was not filed until December 28, 2020, after her 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 she is therefore ineligible for adjustment of status under section 245(m) of the Act.¹

ORDER: The appeal is dismissed.

¹ To the extent the Applicant states she is filing a Form I-539, 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 her U nonimmigrant status upon the proper filing of a Form I-539.