



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

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

In Re: 22530540

Date: AUG. 18, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

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 derivative “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal.<sup>1</sup> We review the questions in this matter *de novo*. See *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 to the Director for the entrance of a new decision.

## I. LAW

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of individuals lawfully admitted to the United States as a U nonimmigrant to that of an LPR, if they establish, among other requirements, that they have been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(3). To meet the continuous physical presence requirement, applicants must submit certain specified evidence, including a photocopy of all pages of all of their passports valid since their admission in U nonimmigrant status (or an equivalent travel document) or an explanation of why they do not have a passport, as well as their own affidavit and other evidence addressing their continuous physical presence for at least three years. 8 C.F.R. § 245.24(d)(5), (9).

The Applicant bears the burden of establishing eligibility, and must do so by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

## II. ANALYSIS

The Applicant, a native and citizen of El Salvador, was granted derivative nonimmigrant status from March 2017 until March 2021. He timely filed the instant U adjustment application in July 2020. The

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<sup>1</sup> The record reflects that during the pendency of this appeal, the Applicant was sent a notice indicating that it was terminated. On appeal, the Applicant submits an email from the Vermont Service Center indicating that this notice resulted from a system error; at the time of a adjudication USCIS systems indicated that the matter was pending before us.

Director denied the U adjustment application, determining that the Applicant had not complied with 8 C.F.R § 245.24(d)(5) because, while he had provided a complete copy of this expired passport with a validity period of January 2, 2014 to January 6, 2019, he had not provided a complete photocopy of his current passport issued on August 17, 2020 and valid through August 17, 2026.<sup>2</sup> Specifically, the Director noted that the photocopy of the current passport that the Applicant submitted was missing page one.

On appeal, the Applicant submits a complete copy of his current passport, including the previously missing page one. Because this evidence is directly relevant to the Director's ground for denial of the Applicant's U adjustment application, we will remand the matter for further consideration of whether the Applicant has satisfied the requirements of 8 C.F.R. § 245.24(d)(5) and otherwise established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

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

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<sup>2</sup> The Director's decision did not address, as it pertains to the requirements of 8 C.F.R. § 245.24(d)(5), the time period from January 2019 to the issuance of his current passport in August 2020, during which the Applicant held derivative U nonimmigrant status.