



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

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

In Re: 23383516

Date: DEC. 13, 2022

Appeal of Vermont Service Center Decision

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

The Applicant seeks to adjust his status to that of 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 Applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. 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, they have been physically present in the United States for a continuous period of three years since the date of their admission as a U nonimmigrant and their 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 citizen of Serbia and Montenegro, was initially granted U-3 nonimmigrant status from July 28, 2014, until July 27, 2018. He filed an extension of stay, which was granted, and he maintained U-3 nonimmigrant status until July 27, 2020. He filed the instant U adjustment application on August 05, 2020. The Director concluded that the Applicant did not continue to hold U nonimmigrant status at the time he filed his U adjustment application and, accordingly, could not establish his eligibility for U-based adjustment of status.

The Applicant, in his brief on appeal, argues that his application should be timely filed. His initial attempt of filing his U adjustment application was delivered to USCIS on May 11, 2020, but was returned, as his Form I-912, Request for Fee Waiver (fee waiver), was denied by the Vermont Service Center. The Applicant initially argues he was not provided a proper reason for the denial of his fee waiver. In support, he submits a copy of the Form I-797, Notice of Action, which states that his fee waiver request was denied, and reasons for denial explained in an attachment, which he claims he did not receive. Following this, the Applicant attempted to send his U adjustment application in again, on July 13, 2020; however, crucially, his U adjustment application was mailed to the incorrect filing location, the Nebraska Service Center, and was subsequently returned to him again. As noted, the

final filing attempt was received and receipted by the Vermont Service Center on August 05, 2020. The Applicant states that his application was received late because the Nebraska Service Center delayed returning his application in a timely manner, which resulted in his U adjustment application being received after his status expired. We note that 8 C.F.R. § 103.2(a)(7)(i) states that a benefit request will be considered received and will record the receipt date as of the actual date of receipt at the *location designated for filing* (emphasis added). The Applicant's U adjustment application was mailed to the incorrect location just two weeks prior to the expiration of his U-3 nonimmigrant status, and it was returned ten days later, on July 23, 2020, by the Nebraska Service Center, and the Applicant had four days to resubmit his application.

Consequently, the Applicant was not in U nonimmigrant status when he filed his U adjustment application, 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").

The Applicant no longer held U nonimmigrant status at the time he filed his U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Accordingly, he was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act. This decision is without prejudice to the filing of a new U adjustment application should the Applicant receive approval of an extension of his U nonimmigrant status.

ORDER: The appeal is dismissed.