



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

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

In Re: 22918816

Date: DEC. 13, 2022

Appeal of Nebraska 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 U” nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application) and dismissed the subsequent motion to reopen. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To be eligible for adjustment of status as a U nonimmigrant, an applicant must demonstrate, among other requirements, that they were lawfully admitted to the United States as a U nonimmigrant and continue to hold such status at the time of application. 8 C.F.R. § 245.25(b)(2)(i)-(ii). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(a); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

U nonimmigrant status is generally granted for a maximum of four years and shall be extended beyond four years upon law enforcement certification of the U nonimmigrant’s continued assistance in the investigation or prosecution of qualifying criminal activity or by USCIS, in its discretion, due to exceptional circumstances. Section 214(p)(6) of the Act.

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U-1 nonimmigrant status from December 22, 2016, until December 21, 2020. He filed the instant U adjustment application on January 11, 2021. 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 Director also dismissed the Petitioner’s motion to reopen.

On appeal, the Applicant contends that his failure to timely file the U adjustment application was not his fault. He explains that counsel submitted his U adjustment application to the Vermont Service Center on December 14, 2020. The Vermont Service Center rejected and returned the submission

because it was not within the service center's jurisdiction. On January 11, 2021, the Applicant resubmitted his adjustment application to the Nebraska Service Center. The Applicant also states that his wife applied for adjustment of status "at the same time he did under the same circumstances described herein" and she was granted adjustment of status. In addition, the Applicant states that he filed a Form I-539, Application to Extend/Change Nonimmigrant Status, and a subsequent motion to reopen, based on exceptional circumstances, but the motion was dismissed. The Applicant concludes that he has been in the United States since 1999, he is presently gainfully employed, and he lives with his wife and his U.S. citizen son.

While we acknowledge the Applicant's explanation for the late filing of his adjustment application, 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, his 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 January 11, 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.

ORDER: The appeal is dismissed.