U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23628766

Date: DEC. 14, 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) based on her "U" nonimmigrant status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that the Applicant did not demonstrate her physical presence in the United States for a continuous period of at least three years since her admission as a U-1 nonimmigrant. The matter is now before us on appeal. On appeal, the Applicant submits a statement and additional evidence. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant "admitted into the United States . . . under section 101(a)(15)(U) [of the Act]" to that of an LPR provided that they "ha[ve] been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant" and otherwise establish that their "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b).

Continuous physical presence is defined as the period of time that an applicant has been physically present in the United States and "must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the [U adjustment] application." 8 C.F.R. § 245.24(a)(1). A U adjustment applicant will be deemed to have not maintained continuous physical presence if they have departed the United States for any period in excess of 90 days or for any periods exceeding 180 days in the aggregate. Section 245(m)(2) of the Act; 8 C.F.R. § 245.24(a)(1). Such departures may be excused if the law enforcement agency that supported the applicant's U petition certifies that the applicant's absence was necessary to assist in the criminal investigation or prosecution or was otherwise justified. *Id.*

An applicant bears the burden of establishing eligibility and that discretion should be exercised in their favor by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(d)(11); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, first entered the United States without inspection, admission, or parole in approximately 1996, when she was 10 years of age. She experienced a history of domestic violence in the United States at the hands of her former partner, D-J-,[1] who is also the father to three of her four U.S. citizen children. The record reflects that the Applicant has an [redacted] 2006 conviction for petty theft, a [redacted] 2009 conviction for burglary and possession of forged driver's license or identification card, a [redacted] 2012 conviction for petty theft, a [redacted] 2017 conviction for driving under the influence of alcohol, a [redacted] 2017 conviction for a hit and run vehicle accident, a [redacted] 2019 arrest for battery, and an [redacted] 2020 arrest for intimate partner violence with injury. The Applicant acknowledged her existing criminal history when she filed her Form I-918, Petition for U Nonimmigrant Status (U petition), and accompanying Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), in March 2014. Her U petition and associated waiver application additionally acknowledged that she last entered the United States without inspection, admission, or parole in 1996. The Director approved the Applicant's U petition and waiver application in May 2017, granting her U-1 nonimmigrant status from May 8, 2017 through May 7, 2021, and she filed the instant U adjustment application in April 2021.

The Director denied the U adjustment application, concluding, in part, that the Applicant did not submit sufficient evidence of her continuous physical presence in the United States.

A. Continuous Physical Presence

To establish eligibility for adjustment of status to that of an LPR under section 245(m) of the Act, an applicant must 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. Section 245(m)(1)(A) of the Act. To establish continuous physical presence for the requisite period, relevant regulations require that the applicant submit "a signed statement . . . attesting to continuous physical presence" and "evidence described in 8 C.F.R. § 245.22." 8 C.F.R. § 245.24(d)(9). The regulations further specify that, "[i]f additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts[.]" *Id.* USCIS will consider any other relevant document(s), as well as evaluate all evidence submitted, on a case-by-case basis. 8 C.F.R. § 245.22(f).

The record before the Director contained evidence relevant to the Applicant's continuous physical presence in the United States since her May 2017 grant of U nonimmigrant status, such as a self-affidavit, copies of all pages of her passport valid from October 2021 to October 2027, Internal Revenue Service (IRS) Forms 1040 and Forms W-2, Wage and Tax Statement (wage and tax statements), copies of her U.S. citizen children's birth certificates and their immunization records, U.S. Bank statements, school records for her children, several letters, and several undated photographs.

[1] Initials are used throughout this decision to protect the identities of the individuals.

In denying the U adjustment application, the Director specifically relied on a lack of evidence of the Applicant's continuous physical presence for the following periods:

- May, September, October, and December 2017;
- January through March and May through December 2018;
- January, March, May, and August through December 2019;
- January through July and September through December 2020; and
- January through July 2021.

On appeal, the Applicant submits a statement recounting her victimization and the incidents that led to her U nonimmigrant status. She also states that she has been a changed woman for the past two years and that she wants to remain in the United States with her four U.S. citizen children. The Applicant submits additional evidence of her physical presence in the United States, as discussed below.

In this instance, the evidence submitted by the Applicant remains insufficient to establish that she has been continuously physically present in the United States for a period of at least three years since the date of her admission as a U nonimmigrant in May 2017. Although the Applicant submits additional relevant evidence of her physical presence in the United States, she has not submitted evidence addressing each of the specific time periods listed by the Director in the denial. Specifically, the evidence on appeal still does not establish her physical presence during the following periods:

- October and December 2017;
- January through March and May through December 2018;
- January and August through December 2019;
- January through July, September, and November 2020; and
- June and July 2021.

Most notably, the Applicant has not submitted sufficient evidence to demonstrate her continuous physical presence in the United States for most of 2018 and has not explained why such evidence is not available. *See* 8 C.F.R. § 245.24(d)(9) (providing that if documentation to demonstrate continuous physical presence is not available, an applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts). While the Applicant submitted various school records for her children to the Director, to include the year 2018, that documentation is not sufficient to establish her physical presence in the United States for the required period. The progress reports for the Applicant's third child, for the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years, all specifically identify B-G- as the person signing the report, who is the Applicant's mother, and the [redacted] Unified School District transcript for the Applicant's eldest son, showing enrollment from 2019-2021, specifically identifies his parent/guardian name as B-G-. The progress report for the Applicant's second child, for the 2017-2018 school year, identifies the Applicant as the person signing the report, but her signature is not actually present on the report. The remaining school records do not identify the name of a parent or guardian. Regardless, school records are generally only accepted to document the physical presence of a person who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required. *See* 8 C.F.R. § 245.22(d)(8). Further, while

the four letters from the Applicant's friends submitted on appeal state that they have known her for years, two are dated prior to the required period, and the remaining two are not dated; thus, they cannot establish her presence in the United States during the requisite period. Finally, we acknowledge the tax documentation and wage and tax statements, submitted to the Director, for 2018, 2019, and 2020, as some evidence of the Applicant's presence for unspecified portions of those calendar years; however, they do not reflect that they have been filed with the IRS and are not a sufficient basis upon which to conclude that the Applicant was actually physically present in the United States during the specific periods since the date of her admission as a U nonimmigrant that the Director identified. *See* 8 C.F.R. § 245.22(d)(7). Absent additional evidence of continuous physical presence in the United States during the referenced periods since her admission as a U nonimmigrant in May 2017, the Applicant has not established her eligibility to adjust status to that of an LPR under section 245(m)(1)(A) of the Act.

B. Discretion on Humanitarian Grounds, to Ensure Family Unity, or Otherwise in the Public Interest

Although the Director's decision did not specifically deny the U adjustment application as a matter of discretion based on adverse factors in the record, it noted that the Applicant did not submit previously requested documentary evidence relating to her arrest in [redacted] 2019 or evidence of a final disposition for her arrests in [redacted] 2019 and [redacted] 2020. The Director further noted that the Applicant was arrested in [redacted] 2019 for battery on a person and in [redacted] 2020 for inflicting corporal injury on a spouse or cohabitant, and that the intent of the U nonimmigrant visa program is therefore not furthered in granting her adjustment of status. While the Director did not specifically address whether the Applicant's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she warrants a positive exercise of discretion in light of these adverse factors in her case, the Applicant must address this issue in any future filings as the present record does not establish that a favorable exercise of discretion is warranted in her case. *See* section 245(m) of the Act (providing that USCIS may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, "in the opinion" of USCIS, their "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest"); *see also* 8 C.F.R. § 245.24(b)(6).

III. CONCLUSION

The Applicant has not overcome the Director's ground for denial on appeal. Accordingly, she has not established eligibility for lawful permanent residency under section 245(m) of the Act.

ORDER: The appeal is dismissed.