



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

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

In Re: 23925048

Date: DEC. 22, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust 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 his “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), concluding that the record did not contain a statement of continuous physical presence. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

U.S. Citizenship and Immigration Services 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 they 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) of the Act. To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, an affidavit from the applicant, stating that they have continuous physical presence for at least three years since the date of admission as a U nonimmigrant. 8 C.F.R. § 245.24(d)(9), (a)(1).

The Applicant, a native and citizen of Mexico, obtained U-2 nonimmigrant status valid from May 12, 2017, to May 11, 2021. He filed his U adjustment application in September 2020. The Director issued a request for evidence (RFE) for the Applicant to submit “a self-affidavit attesting to [his] continuous physical presence in the United States for at least three years since [his] admission as a U nonimmigrant.” In response to the RFE, the Applicant submitted complete copies of his current passport and his spouse’s current passport.

The Director denied the U adjustment application as the Applicant’s RFE response did not include a statement of continuous physical presence establishing he maintained continuous physical presence in the United States for at least three years since his admission as a U nonimmigrant.

On appeal, the Applicant submits a personal affidavit attesting to his continuous physical presence in the United States since his first arrival in the United States in 1993 or 1994. The Applicant states that he has not left the United States since that time, and his period of continuous physical presence includes the three years that he was in U-2 nonimmigrant status prior to filing his U adjustment application.

The Applicant has submitted a personal affidavit regarding his continuous physical presence, as required by 8 C.F.R. § 245.24(d)(9). Because the Applicant has overcome the only ground for the Director's denial, we will remand the matter to the Director for consideration of whether he has otherwise established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

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