



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

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

In Re: 19941061

Date: FEB. 3, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant 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 derivative “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application), concluding that the record did not establish, as required, that the Applicant continued to hold U nonimmigrant status at the time he filed his U adjustment application. The matter is now before us on appeal. 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 dismiss the appeal.

**I. LAW**

To be eligible for adjustment of status as a U nonimmigrant, the applicant must demonstrate that, *inter alia*, he was lawfully admitted to the United States as a U nonimmigrant and continues to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i)–(ii). An applicant must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

**II. ANALYSIS**

The Applicant, a citizen of Turkey, was granted U nonimmigrant status from October 2015 to September 2019. He initially filed a U adjustment application in September 2018, which USCIS denied in April 2019 because he was 21 days short of establishing his continuous physical presence in the United States for three years since his admission as a U nonimmigrant. He then filed the instant U adjustment application in October 2019. The Director denied the application, concluding that the Applicant did not continue to hold U nonimmigrant status at the time he filed his U adjustment application. The Director noted that the Applicant’s U nonimmigrant status expired on September 30, 2019; the U adjustment application was filed on October 24, 2019; and the record lacked evidence the Applicant requested to have his U nonimmigrant status extended by filing a Form I-539, Application to Extend/Change Nonimmigrant Status (Form I-539).

On appeal, the Applicant asserts that USCIS should exercise its discretion to accept his U adjustment application filing date *nunc pro tunc* because he has otherwise met all eligibility criteria and his gap in maintaining U nonimmigrant status was only 24 days. The Applicant further contends that the instant U adjustment application was filed after his status expired due to extraordinary circumstances beyond his control. Specifically, he argues that his counsel refiled his U adjustment application in April 2019; USCIS did not accept that filing; his counsel did not receive the rejection notice until October 2019, after his U nonimmigrant status expired on September 30, 2019; and his counsel subsequently mailed the instant U adjustment application in October 2019. To support his assertions, the Applicant submits an affidavit from his counsel and a cover letter dated April 24, 2019, that he asserts was provided with his earlier U adjustment application.

Upon review, we first note that while the Applicant asserts that he refiled his U adjustment application in April 2019 and USCIS rejected it, the record does not contain sufficient documentation, such as a corresponding rejection notice from USCIS, to support this assertion.<sup>1</sup> Moreover, the record reflects that the Applicant did not file a Form I-539 to extend his U nonimmigrant status beyond September 30, 2019, prior to submitting the instant U adjustment application on October 24, 2019. 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.

Based on the foregoing, the Applicant has not established by a preponderance of the evidence that he continued to hold U nonimmigrant status when he filed his instant U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Although we recognize the hardship to the Applicant 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”). Accordingly, the Applicant was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act.<sup>2</sup>

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> We note that per 8 C.F.R. § 103.2(a)(7)(iii) a rejected benefit request does not retain a filing date.

<sup>2</sup> This decision is without prejudice to the filing of a new U adjustment application should the Applicant request, and receive approval of, an extension of his U nonimmigrant status.