U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19242967

Date: FEB. 22, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of a 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 as a victim of qualifying criminal activity. The Vermont Service Center Director denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we conclude that a remand is warranted in this case.

I. LAW

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. Section 245(m) of the Act. 8 C.F.R. § 245.24(a)(1) defines continuous physical presence as:

> [T]he period of time that the [noncitizen] 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 application for adjustment of status.

The regulation at 8 C.F.R. § 245.24(d)(9) provides that "[e]ach U nonimmigrant who is requesting adjustment of status must submit . . . [e]vidence, including an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years as defined in paragraph (a)(1) of this section."

Additionally, the regulation at 8 C.F.R. § 245.24(e) requires that:

> Each applicant for adjustment of status under section 245(m) of the Act must provide evidence of whether or not any request was made to the alien to provide assistance, after having been lawfully admitted as a U nonimmigrant, in an investigation or

prosecution of persons in connection with the qualifying criminal activity, and his or her response to any such requests.

(1) An applicant for adjustment of status under section 245(m) of the Act may submit a document signed by an official or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity, affirming that the applicant complied with (or did not unreasonably refuse to comply with) reasonable requests for assistance in the investigation or prosecution during the requisite period. To meet this evidentiary requirement, applicants may submit a newly executed Form I-918, Supplement B, "U Nonimmigrant Status Certification.

II. ANALYSIS

The Applicant is a native and citizen of Mexico who entered the United States without inspection, admission, or parole in 2008. USCIS granted the Applicant U nonimmigrant status from October of 2015 to September of 2019 as a victim of felonious assault who was helpful in the investigation of the crime. The Applicant timely filed the U adjustment application in January of 2019. After issuing a request for evidence, the Director denied the U adjustment application for the following reasons:

1. The record lacked the required evidence in the form of an affidavit from the Applicant attesting to his continuous physical presence since his admission as a U nonimmigrant;
2. The Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B) was not complete and it did not establish the Applicant's helpfulness to law enforcement; and
3. The Applicant provided an incorrect response to a question on the Form I-918, Petition for U Nonimmigrant Status (U petition). That issue raised additional concerns for the Director who noted the Applicant indicated on the U petition that he had never been denied admission to the United States. However, the record reflected at least three instances in which the Applicant was either ordered removed or granted voluntary return to Mexico. The Director concluded that his "No" response to the "denied admission" question on the U petition resulted in him being inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact.

Accompanying the appeal, the Applicant submits evidence, including but not limited to sworn statements relating to his continuous physical presence and addressing the "denied admission" question from the U petition, and a new Supplement B that provides a response to the helpfulness question that was previously missing.

Within the U adjustment application's denial, the Director considered the Applicant's response on the U petition indicating that he had never "been denied a visa or denied admission to the United States" to result in him being inadmissible under section 212(a)(6)(C)(i) of the Act as one who "by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act . . . ." As noted above, the Director considered this response to make the Applicant inadmissible

because USCIS records show that he had been ordered removed or granted voluntary return to Mexico, but his response on the U petition was not consistent with those records.

Within his sworn statement submitted on appeal, the Applicant explains that he was never "denied admission" to enter the United States at any airport or border inspection point and that he never sought admission as it is legally defined under the Act. The context of the "denied admission" questions on the U petition and the U adjustment application relate to the lawful entry of a foreign national into the United States after inspection and authorization by an immigration officer. *See* section 101(a)(13)(A) of the Act (defining the terms "admission" and "admitted").

As a result, the "denied admission" questions should not be read to apply to someone who enters the country without inspection and is subsequently apprehended and either ordered removed or granted voluntary return. Because the Applicant declared on the U petition that he had previously been in removal proceedings, and the record does not demonstrate that he has been denied admission, we withdraw the Director's determination that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Because the Applicant has provided new evidence directly relevant to the Director's grounds for denial, we will remand the matter to the Director to consider this evidence in the first instance, and further determine whether the Applicant has satisfied the remaining eligibility requirements to adjust his status to that of an LPR under section 245(m) of the Act.[1]

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

[1] The Director may elect to seek a more comprehensive account from the Applicant relating to each of his entries and exits from the United States. We note that his new statement submitted on appeal appears to reflect that he last entered the country in 2008 when he states that "[i]n July 2008 I crossed the border again and that's how I am here now." But according to his U petition, he last entered in 2010. It is unclear whether the variance was a typographical error in his appellate statement or something else because his new statement submitted on appeal also reveals that "[i]n 2010 I had a removal in [redacted] Ohio." Because of the information in his appellate statement relating to 2010, it does not appear that the Applicant provided a misleading statement, but the Director may wish to elicit additional information to make a more informed determination on that issue.