U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19978607

Date: FEB. 25, 2022

Motion on Administrative Appeals Office 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 her "U" nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The Applicant subsequently filed an appeal, which we dismissed. The matter is now before us on a motion to reopen. Upon review, we will remand the matter to the Director for the issuance of a new decision.

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 she "has 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." Section 245(m)(1) of the Act. Implementing regulations similarly require a U adjustment applicant to establish "continuous physical presence for 3 years" in the United States. 8 C.F.R. § 245.24(b)(3).

A U adjustment applicant will be deemed not to have maintained continuous physical presence in the United States if she departed from the United States for a single period in excess of 90 days or for any periods exceeding 180 days in the aggregate unless the absence was "in order to assist in the investigation or prosecution [of the qualifying criminal activity,]" or "an official involved in the investigation or prosecution certifie[d] that the absence was otherwise justified." Section 245(m)(2) of the Act; 8 C.F.R. § 245.24(a)(1).

An applicant bears the burden of establishing eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant is a citizen of the Dominican Republic. The Applicant was granted U nonimmigrant status from October 2015 until September 2019, and timely filed the instant U adjustment application in September 2019. The Director denied the application in August 2020, determining that the Applicant was not eligible to adjust her status to that of a lawful permanent resident because, at the time of filing her U adjustment application, she did not demonstrate her continuous physical presence in the United States for a continuous period of at least three years since her admission as a U-1 nonimmigrant. In September 2020, the Applicant submitted an appeal, which we dismissed in May 2021. In August 2021, the Applicant filed a motion to reopen.

A. Untimely Filing of Motion to Reopen

Pursuant to 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b), motions must generally be filed within 33 days of the adverse decision. In response to the coronavirus (COVID-19) pandemic, USCIS extended filing deadlines associated with the Form I-290B, Notice of Appeal or Motion (Form I-290B). If USCIS issued the decision between March 1, 2020, and October 31, 2021—as here—an applicant may file a Form I-290B within 60 calendar days from the date of the adverse decision,[1] with three days added for service by mail pursuant to 8 C.F.R. § 103.8(b). The untimely filing of a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

The adverse decision in this case was issued on May 13, 2021. The Applicant filed a motion to reopen on August 16, 2021, 96 days after the adverse decision. However, on motion, the Applicant asserts that due to the administration of and absences in the Police Department of Puerto Rico, she was unable to obtain necessary evidence and file her motion to reopen any earlier. Upon review, the Applicant has submitted sufficient evidence to establish that her delay in filing her motion to reopen was reasonable and beyond her control as contemplated by 8 C.F.R. § 103.5(a)(1)(i).

B. Continuous Physical Presence

In the decision denying her U adjustment application, the Director noted that the Applicant departed the United States to the Dominican Republic on August 25, 2017, and returned to the United States on December 26, 2017, a span of 123 consecutive days. As the Applicant was outside of the United States for a period in excess of 90 days, the Director concluded that she did not maintain continuous physical presence in the United States pursuant to section 245(m) of the Act and 8 C.F.R. § 245.24(a)(1). The Director further highlighted that she did not submit any evidence that satisfied the exceptions outlined in those provisions. We dismissed the Applicant's appeal on the same basis.

On motion, the Applicant asserts that she is excepted from the requirement of continuous physical presence because her absence was "otherwise justified" as permitted under section 245(m)(2) of the Act. In support of her assertion, she submits a new Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), executed by an internal affairs colonel (certifying official) at the Police Department of Puerto Rico. In the narrative portion of the Supplement B, the certifying official states

[1] *See* "USCIS Extends Flexibility for Responding to Agency Requests," (Dec. 30, 2021), https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-0.

that the Applicant's "stay in the Dominican Republic from August 25, 2017 to December 26, 2017 was a justified one based on the circumstances happening at the time." Upon review, the record demonstrates that the Applicant has provided evidence that is material to the Director's determination that she did not maintain at least three years of continuous physical presence in the United States. As such, we will remand the matter to the Director to consider this evidence in the first instance and redetermine whether the Applicant has established three years of continuous physical presence in the United States and otherwise satisfied the remaining eligibility requirements to adjust her status to that of an LPR under section 245(m) of the Act.

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