



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

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

In Re: 19271029

Date: JAN. 31, 2022

Appeal of Nebraska 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 derivative “U” nonimmigrant status. The Nebraska Service Center Director denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and 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 will dismiss the appeal.

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, he has been physically present in the United States for a continuous period of three years since the date of his admission as a U nonimmigrant and his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant “continue[] to hold such status at the time of [the filing of the U adjustment] application . . .” 8 C.F.R. § 245.24(b)(2)(ii).

II. ANALYSIS

The Applicant is a native and citizen of El Salvador. His father filed a derivative U petition on his behalf, and USCIS approved the petition from October 28, 2016, to October 27, 2020. The Applicant was in El Salvador at the time his U petition was approved, and he subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). DOS issued the Applicant’s visa on April 6, 2017, with an expiration date of October 27, 2020. The Applicant entered the United States on April 23, 2017, and U.S. Customs and Border Protection admitted him in U status until January 30, 2019. The U.S. Customs and Border Protection (CBP) officer specified on the entry stamp in the Applicant’s passport that they were limiting his U-3 status to January of 2019 due to his passport’s expiration date. Therefore, the Applicant’s U-3 status expired in January of 2019 and not in October of 2020.

The Applicant filed his U adjustment application in August of 2020 and the Director denied the application because he was no longer in U nonimmigrant status on the filing date. The Applicant filed a subsequent motion to reconsider in which the Director reaffirmed their original denial. Based on the evidence in the record, as supplemented on appeal, we find no error in the Director's decision to deny the U adjustment application.

On appeal, the Applicant asserts that he relied on the USCIS approval notice for his U petition as represented on the Form I-797, Notice of Action, and an approved Form I-765, Application for Employment Authorization, which each granted him U status until October of 2020. However, the Form I-797 specified that "[t]he approval of this petition does not grant any immigration status and does not guarantee your derivative family member will be found eligible for a visa" A derivative family member only receives U nonimmigrant status concurrently with approval of his U petition if they are in the United States at the time of approval. 8 C.F.R. § 214.14(f)(6)(i) ("When USCIS approves a Form I-918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien [U] . . . nonimmigrant status."). For such derivative family members already in the United States, "a Form I-94, Arrival-Departure Record, indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status." Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53028 (Sept. 17, 2007).

By contrast, a derivative family member who is outside of the United States at the time their U petition is approved does not obtain U status until their entry and admission into the United States on a U visa. 8 C.F.R. § 214.14(f)(6)(ii) ("When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval . . . [and] forward the approved [petition] to the [DOS] . . ."). Subsequently, the derivative family member "should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant." *Id.* at 53014. The period of authorized stay is determined at the time of admission, and "as with all other nonimmigrant classifications, the U nonimmigrant's Form I-94 issued to evidence status will indicate the approved period of stay." *Id.* at 53028. The Applicant's period of U nonimmigrant status was determined at the time of their admission into the United States. That status expired on January 30, 2019, prior to the filing of their U adjustment application. Accordingly, the Applicant was not in U nonimmigrant status at the time of filing, as required under 8 C.F.R. § 245.24(b)(2)(ii).

After the Director reaffirmed the original denial in response to the motion, the Applicant filed for an extension of his U status in June of 2021, and while this appeal was pending the Director approved that request retroactively extending his U status from October 28, 2020, to January 23, 2023. Even though the U status was adjudicated in a retroactive manner, it still did not place him in U status on the date he filed the U adjustment application. We observe that the Applicant's U status expired on January 30, 2019, as represented on his entry stamp from CBP in his passport. And the recent retroactive extension from the Director listed a beginning date for his U status on October 28, 2020.

The Applicant was required to be lawfully admitted in U nonimmigrant status and to continue to hold that status when he filed the U adjustment application. However, he experienced a gap in his U status

in between January 31, 2019, and October 27, 2020. This ultimately means that the Applicant did not continue to hold U nonimmigrant status at the time he filed his U adjustment application on August 3, 2020, which is a requirement within the regulation at 8 C.F.R. §§ 245.24(b)(2)(ii), (d)(7). Because of that lapse in his U nonimmigrant status, the Applicant was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act.

This decision is without prejudice to the filing of a new U adjustment application should the Applicant also obtain a new retroactive extension of his U nonimmigrant status that eliminates the gap in his U status that presently exists.

ORDER: The appeal is dismissed.