



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

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

In Re: 20915814

Date: MAR. 2, 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 derivative “U” nonimmigrant status. 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 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 Mexico who entered the United States without inspection, admission, or parole in 2010. USCIS granted the Applicant U nonimmigrant status from February 15, 2013, to February 11, 2017, as the derivative child of a principal U nonimmigrant. The Applicant filed his first U adjustment application on February 7, 2017, which the Director denied on a discretionary basis primarily focusing on his pending criminal charges. After the resolution of those pending criminal charges, the Applicant filed his second U adjustment application on March 16, 2020. The Director denied the second U adjustment application, determining the Applicant did not continue to hold U nonimmigrant status at the time he filed this U adjustment application and, accordingly, could not establish his eligibility for U-based adjustment of status. The Director further noted that the record lacked evidence that the Applicant had extended his U nonimmigrant status, which could resolve this issue. On appeal, the Applicant explains that he was unable to file the second U adjustment

application until his criminal charges were resolved, but he does not address whether he has applied for a *nunc pro tunc* extension of his U nonimmigrant status.

U nonimmigrant status is generally granted for a maximum of four years and shall be extended beyond four years upon law enforcement certification of the U nonimmigrant's continued assistance in the investigation or prosecution of qualifying criminal activity or by USCIS, in its discretion, due to exceptional circumstances. Section 214(p)(6) of the Act. A review of agency systems does not reflect that the Applicant has filed for an extension of his U nonimmigrant status. 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. Although we recognize the hardship to the Applicant and his family 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").

### III. CONCLUSION

The Applicant no longer held U nonimmigrant status when he filed his U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Accordingly, he 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 request, and receive approval of, an extension of his U nonimmigrant status.

**ORDER:** The appeal is dismissed.