



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

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

In Re: 23052213

Date: NOV. 14, 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 his “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application) and we summarily dismissed his subsequent appeal. The matter is now before us on a motion to reopen. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought. The burden of proof is on the applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant filed his U adjustment application in September 2015. The Director denied the application, concluding that the Applicant had not established that a favorable exercise of discretion was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest as required under section 245(m) of the Act.

In March 2022, we summarily dismissed the Applicant’s appeal because it did not identify specifically any erroneous conclusion of law or statement of fact in the unfavorable decision, as 8 C.F.R. § 103.3(a)(1)(v) requires. In our decision, incorporated here by reference, we advised the Applicant that although he indicated on his Form I-290B, Notice of Appeal or Motion (Form I-290B), that he would submit a brief and additional evidence to the AAO within 30 days, we had not received his brief or evidence.

The Applicant now files a motion to reopen our summary dismissal. He submits a letter from counsel indicating that “the brief was sent to the Vermont Service Center on January 17, 2022, prior to

receiving the receipt and transfer notice in order to comply with the 30 day period.” The Applicant also provides tracking information to show the mailing of his brief to the Vermont Service Center.

Although the Applicant provides evidence that he attempted to file his brief and additional evidence in support of his appeal, the documentation submitted on motion indicates that he did not send those documents directly to the AAO’s mailing address, as required. The instructions for Form I-290B provide the following mailing instructions for applicants who file a brief within 30 days of filing an appeal: “Any brief and/or evidence submitted after you file Form I-290B must be sent directly to the AAO, even if the appeal has not yet been transferred to the AAO. For the AAO’s mailing address, visit www.uscis.gov/aao.” Form I-290B, Instructions for Notice of Appeal or Motion, <https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf> (Dec. 2019 ed.), at 6; *see also* 8 C.F.R. § 103.2(a)(1) (providing that “[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions” and that a “form’s instructions are . . . incorporated into the regulations requiring its submission.”). Moreover, the box the Applicant checked on the Form I-290B to indicate that he would file a brief and additional evidence within 30 days states: “I will submit my brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal.” Absent evidence demonstrating that he followed these instructions and mailed his brief and additional evidence to the correct mailing address, the Applicant has not provided new facts or evidence that would overcome our decision to summarily dismiss his appeal. Accordingly, the Applicant has not satisfied the requirements for a motion to reopen.

ORDER: The motion to reopen is dismissed.