



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

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

In Re: 23329276

Date: NOV. 23, 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). We summarily dismissed the Applicant’s appeal and the matter before us is a motion to reopen. Upon review, we will dismiss the motion.

A motion a motion to reopen must state new facts and be supported by documentary evidence of new facts. “New facts” are facts that are relevant to the issue(s) raised on motion. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The Applicant filed his appeal in February 2022. We dismissed the appeal in May 2022 and in our decision, incorporated here by reference, we explained that the appeal did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v). On the Form I-290B, Notice of Appeal or Motion, the Applicant stated that a brief and/or additional evidence would be submitted within 30 calendar days of filing the appeal, but at the time of the decision we had not received a brief or additional evidence. The Applicant filed the instant motion in May 2022.

On motion, the Applicant contends, in a letter authored by counsel, that he timely and properly filed a brief in support of his appeal with the Vermont Service Center in March 2022, and that therefore our decision to dismiss the appeal was in error. The Applicant also submits documentary evidence relevant to the basis for denial of his U adjustment application and requests that we reopen the proceedings and accept his appeal.

We recognize the Applicant’s arguments and note the submission of additional materials related to the Applicant’s appeal, relevant to the basis for denial of his U adjustment application. However, they are not sufficient to meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). The Applicant’s submission of the new evidence he intended to include with his appeal does not constitute documentary evidence of new facts that warrant reopening that decision. The record reflects, and the Applicant affirms on motion, that he sent his brief and evidence related to his appeal to the Vermont

Service Center, rather than to us. Contrary to the Applicant's contentions on appeal, the form instructions for the I-290B regarding appeals state "I will submit my brief and/or additional evidence to the AAO" and "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." Per 8 C.F.R. § 103.2(a)(1), "[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions" and a "form's instructions are . . . incorporated into the regulations requiring its submission." We lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials).

In summary, the Applicant has not established new facts relevant to our dismissal of his previous motion that would warrant reopening the proceedings. Consequently, we have no basis for reopening our prior decision. The Applicant's appeal therefore remains dismissed, and his underlying U adjustment application remains denied.

**ORDER:** The motion to reopen is dismissed.