



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

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

In Re: 22660392

Date: OCT. 27, 2022

Appeal of Vermont Service Center 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 the matter is now before us on appeal. Upon *de novo* review, we will remand the matter to the Director for further consideration.

Under section 245(m)(3) of the Act, the Secretary of Homeland Security may issue an immigrant visa to or adjust the status of a qualifying family member of a U-1 nonimmigrant who was granted adjustment of status (U-1 principal) under subsection 245(m)(1) if the qualifying family member was not previously accorded U nonimmigrant status under section 101(a)(15)(U)(ii) of the Act. 8 C.F.R. § 245.24(g). To establish eligibility under section 245(m)(3) of the Act, the U-1 principal must, among other requirements, file Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant on behalf of the qualifying family member. 8 C.F.R. § 245.24(g), (h). A qualifying family member who has an approved Form I-929 may then request adjustment of status. 8 C.F.R. § 245.24(i)(1). 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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The record reflects that the Applicant was the beneficiary of a Form I-929 which his spouse, a U-1 nonimmigrant, filed on his behalf. The record contains a Form I-797, Notice of Action, showing that the Director approved the Form I-929 on June 17, 2020. Based on the approval of the Form I-929, the Applicant subsequently filed his U adjustment application on February 8, 2021. While the U adjustment application was pending, the Applicant’s spouse submitted a letter, dated November 5, 2021, requesting that the Applicant’s U adjustment application be withdrawn. The Applicant’s spouse stated that the purpose of her letter was to “Withdraw the I-485 Application that was submitted” and provided the receipt number for the Applicant’s U adjustment application, [REDACTED]. Shortly thereafter, on November 16, 2021, the Applicant’s spouse submitted another letter requesting that USCIS “disregard the letter [she] wrote . . . on 11/05/2021, where [she] requested to withdraw of [sic] [her] petition for” the Applicant and “requesting to consider the I-485 Application process to be continued.” The Applicant’s spouse again provided the receipt number for the Applicant’s U adjustment application. The November 16, 2021 letter from the Applicant’s spouse bears a receipt stamp indicating that the Director received it at the Vermont Service Center on November 24, 2021.

On January 24, 2022, the Director issued an *Acknowledgement of Withdrawal* to the Applicant's spouse, stating, "Your request to withdraw your Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant has been noted for the record. The withdrawal of this case is a final action for which there are no appeal or motion rights . . . ." The Director then denied the Applicant's U adjustment application because he was no longer the beneficiary of an approved Form I-929.

The Director's acknowledgement of withdrawal of the Form I-929 appears to have been in error. The Applicant's spouse did not request withdrawal of the Form I-929, but instead requested withdrawal of the Applicant's U adjustment application. Additionally, the Director did not acknowledge the subsequent letter from the Applicant's spouse, filed two months prior to the Director's acknowledgement of withdrawal, in which she asked that USCIS disregard her withdrawal request. Finally, the Applicant filed the U adjustment application on his own behalf and the record does not reflect that his spouse had authority to withdraw it. *See* 8 C.F.R. § 245.24(i)(1) ("Qualifying family members in the United States may request adjustment of status by submitting: . . . Form I-485 . . . [and] . . . An approved Form I-929 . . . .") Although his spouse may have withdrawn the Form I-929 she filed on the Applicant's behalf pursuant to 8 C.F.R. § 103.2(b)(6), the evidence does not indicate that she requested or intended to do so. Accordingly, the record does not demonstrate that withdrawal of the approved Form I-929 was appropriate. We remand the matter to the Director to consider whether the Applicant is the beneficiary of an approved Form I-929 and otherwise meets the eligibility requirements for adjustment of status.

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