



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

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

In Re: 25801630

Date: APR. 4, 2023

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. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of a lawful permanent resident (LPR) based on having been granted U status. In addition, an applicant for adjustment of status under 245(m) must comply with the general eligibility and documentary requirements to adjust status at 8 C.F.R. § 245.5, which requires that the applicant “have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.”

The Applicant is a citizen of Mexico who last entered the United States without inspection in 2008. The Director granted his petition for U nonimmigrant status in October 2017 until October 2021.¹ He timely filed the instant adjustment application in October 2020. In June 2022, the Director, in a request for evidence (RFE), determined that the Applicant’s submitted Form I-693, Report of Medical Examination and Vaccination Record (medical examination report) was no longer valid or would no longer be valid upon final adjudication of the U adjustment application and provided the Applicant with the opportunity to submit a new medical examination report. The Applicant responded with an updated medical examination report. The Director determined the Applicant’s updated medical examination report did not have all the required vaccinations per regulations, specifically the

¹ The Applicant had been placed on a waiting list for U nonimmigrant status in July of 2016 as the statutory cap for U-1 nonimmigrant status had been reached.

Applicant did not receive the Hepatitis B vaccination in accordance with the amended Center for Disease Control and Prevention (CDC) Hepatitis B vaccination requirement.² Thus, the Director denied the Applicant's U adjustment application, because he did not submit "the proper documentation as required by regulation."

On appeal, the Applicant now provides a newly executed medical examination containing information regarding the Hepatitis B vaccination. As the Applicant has provided new evidence that the Director has not had the opportunity to review, we will remand the matter to the Director to consider this evidence in the first instance, and further determine whether the Applicant has satisfied the remaining eligibility requirements to adjust his status to that of an LPR under section 245(m) of the Act.

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

² See, e.g., Center for Disease Control and Prevention, *Civil Surgeon's Vaccination Technical Instructions*, <https://www.cdc.gov/immigrantrefugeehealth/civil-surgeons/vaccinations.html>; Center for Disease Control and Prevention, *Hepatitis B Vaccination of Adults*, <https://www.cdc.gov/hepatitis/hbv/vaccadults.htm>.