



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

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

In Re: 26245015

Date: APR. 5, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

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 her “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.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to a lawful permanent resident (LPR) if that individual demonstrates, among other requirements, that he or she has been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant and continuing through the date of the conclusion of adjudication of the U adjustment application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1). To establish eligibility for adjustment of status to that of an LPR under section 245(m) of the Act, an applicant must have been physically present in the United States for a continuous period of three years since the date of his admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act. To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, a photocopy of all pages of all passports that were valid during the required period, or an equivalent travel document or explanation of why he or she does not have a passport, as well as documentation and information regarding departures and arrivals from the United States while in U status. 8 C.F.R. § 245.24(d)(5). In addition, to establish continuous physical presence for the requisite period, relevant regulations require that the applicant submit, *inter alia*, “a signed statement . . . attesting to continuous physical presence” and “additional documentation.” 8 C.F.R. § 245.24(d)(9).

The Applicant is a citizen of Mexico who last entered the United States without inspection in 2001. The Director granted her petition for U nonimmigrant status in April 2017 until April 2021.<sup>1</sup> The Applicant timely filed the instant U adjustment application in September 2020. The Director denied the application, finding that the Applicant had not complied with 8 C.F.R. § 245.24(d)(9) because she did not provide a statement of her continuous physical presence.

On appeal, the Applicant submits a statement and a notarized affidavit addressing her physical presence in the United States. Upon review, the Applicant has provided new evidence that the Director has not had the opportunity to review. As such, 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 her 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.

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<sup>1</sup> The Applicant had been placed on a waiting list for U nonimmigrant status in April 2005 as the statutory cap for U-1 nonimmigrant status had been reached.