



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

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

In Re: 26180641

Date: APR. 13, 2023

Appeal of Nebraska 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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application) and dismissed the subsequent combined motion to reopen and reconsider. 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 they have 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 their 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 they do 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 Brazil who was admitted into the United States as a nonimmigrant visitor for tourism in January 2008. In June 2018, the Director granted the Applicant U-2 nonimmigrant status based on her husband’s U nonimmigrant status with validity from June 2018 through May

2022.¹ The Applicant timely filed the instant U adjustment application in June 2021. 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 sufficient documentation to determine her physical presence in the United States. The Applicant filed a combined motion to reopen and reconsider, which the Director dismissed, finding that “the new information which you have included with your motion is insufficient to overcome the grounds for denial.”

On appeal, the Applicant asserts, through counsel, that the evidence submitted with her combined motion to reopen and reconsider, establishes her eligibility by a preponderance of the evidence. A review of the record shows the Applicant submitted the following documentary evidence with her combined motion to reopen and reconsider:

- Copy of lease agreement signed by the Applicant on April 27, 2012;
- Copy of lease renewal signed by the Applicant on April 16, 2013;
- Copy of lease renewal signed by the Applicant on April 10, 2014;
- Copy of lease renewal signed by the Applicant on March 4, 2015;
- Copy of lease renewal signed by the Applicant on March 2, 2016;
- Copy of lease renewal signed by the Applicant on May 2, 2017;
- Copy of lease renewal signed by the Applicant on May 5, 2018;
- Copy of lease renewal signed by the Applicant on March 5, 2019;
- Copy of lease renewal signed by the Applicant on April 9, 2020;
- Copy of lease agreement signed by the Applicant on April 27, 2021;
- Copy of patient visitor log from [REDACTED] Medical Center; and
- Notarized letters from three employers.

The [REDACTED] Apartments lease agreement in the record identified the Applicant and her husband as tenants in an apartment on [REDACTED] California from May 2012 through April 2013. The eight subsequent lease renewal agreements establish the Applicant’s continued residence at the same residence through April 2021. An additional [REDACTED] Apartments lease agreement identified the Applicant and her husband as tenants in the same apartment on [REDACTED] [REDACTED] California from May 2021 through April 2022. The documentation from [REDACTED] [REDACTED] Medical Center indicates that the Applicant received medical care in 2013, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022. Finally, the Applicant submitted notarized letters from three employers indicating that she has been housecleaning: twice a month since late 2017, weekly for fifteen years, and since 2008.

Based on this evidence, the Applicant has established, by a preponderance of the evidence, her continuous physical presence in the United States for a period of at least three years since her June 2018 admission as a U nonimmigrant. Because the Applicant has overcome the only ground for the Director’s denial, we will remand the matter to the Director for consideration of whether she satisfied the remaining eligibility requirements to adjust her status to that of an LPR under section 245(m) of the Act.

¹ The Applicant had been placed on a waiting list for U nonimmigrant status in February 2018 as the statutory cap for U-1 nonimmigrant status had been reached.

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