



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

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

In Re: 26081918

Date: APR. 13, 2023

Appeal of Vermont Service Center Decision

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

The Applicant seeks to become a lawful permanent resident based on her derivative “U” nonimmigrant status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence and reasserts her eligibility. The Administrative Appeals Office (AAO) reviews 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 remand the matter to the Director for further proceedings.

To be eligible for adjustment of status as a U nonimmigrant, an applicant must demonstrate, among other eligibility criteria, that they were lawfully admitted to the United States as a U nonimmigrant and continues to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii). An applicant must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

The Applicant is a citizen of Ecuador. The Applicant’s mother filed a derivative U petition on her behalf, and U.S. Citizenship and Immigration Services (USCIS) approved the petition from February 13, 2017, to February 12, 2021. The Applicant was in Ecuador at the time her U petition was approved, and she subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). DOS issued the Applicant’s visa on June 7, 2017, with an expiration date of February 21, 2021.<sup>1</sup> The Applicant first entered the United States on July 26, 2017, and U.S. Customs and Border Protection (CBP) admitted her in U status until January 22, 2020. The Applicant filed her U adjustment application on December 3, 2020. On November 7, 2022, the Director denied the application concluding that the Applicant was not in U nonimmigrant status on the filing date.

On appeal, the Applicant correctly asserts that the Director did not consider her first departure and re-entry in U nonimmigrant status. We note that the Applicant departed the United States on January 27, 2019. The Applicant re-entered on April 4, 2019, and CBP extended her U nonimmigrant status until February 4, 2021. The Applicant subsequently departed the United States on July 3, 2021, re-entered

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<sup>1</sup> Instead of February 12, 2021.

on July 25, 2021, and was admitted by CBP until July 23, 2022.<sup>2</sup> Therefore, when the Applicant filed her U adjustment application on December 3, 2020, she was in valid U nonimmigrant status.

A derivative family member who is outside of the United States at the time her U petition is approved does not obtain U status until her entry and admission into the United States on a U visa. 8 C.F.R. § 214.14(f)(6)(ii) (“When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval . . . [and] forward the approved [petition] to the [DOS] . . .”). Subsequent to the approval of the U petition, the derivative family member “should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant.” *Id.* at 53014. The period of authorized stay is determined at the time of admission, and “as with all other nonimmigrant classifications, the U nonimmigrant’s Form I-94 issued to evidence status will indicate the approved period of stay.” *Id.* at 53028. The Applicant’s period of U nonimmigrant status was determined at the time of her admission into the United States. That status did not expire prior to the filing of her U adjustment application because it was already extended by CBP due to her departure and re-entry into the United States. Accordingly, the Applicant was in U nonimmigrant status at the time of filing, as required under 8 C.F.R. § 245.24(b)(2)(ii).

Because the Applicant has demonstrated that she held U nonimmigrant status at the time of filing her U adjustment application, we remand the matter to the Director to determine whether she has satisfied the remaining eligibility requirements to adjust her status to that of a lawful permanent resident 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>2</sup> The Applicant was admitted in “DA” status in alignment with her grant of advance parole during the pendency of her U adjustment application.