



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

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

In Re: 27545695

Date: AUG. 22, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident based on their “U” nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), as a matter of discretion, concluding that there was insufficient evidence to show that the positive and mitigating equities outweigh the negative factors in the case. We summarily dismissed the Applicant’s subsequent appeal, and the matter is now before us on a motion to reopen. 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). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that meets these requirements and establishes eligibility for the benefit sought.

The Applicant filed his U adjustment application in July 2019, which was denied by the Director in September 2022. The Applicant then filed his appeal in December 2022. In March 2023, we summarily dismissed the Applicant’s appeal because “it did not identify specifically any erroneous conclusion of law or statement of act in the unfavorable decision,” as required. 8 C.F.R. § 103.3(a)(1)(v). In our decision, incorporated here by reference, we also advised the Applicant that, although he indicated on his Form I-290B, Notice of Appeal or Motion (Form I-290B), that he would submit a brief and additional evidence within 30 days, we had not received either. The Applicant now files a motion to reopen our summary dismissal.

On motion, the Applicant contends that the summary dismissal of his appeal was incorrect. The Applicant asserts, through counsel, that his brief and additional evidence were mailed to and received by the Vermont Service Center in December 2022 and again in January 2023, but were rejected by the Vermont Service Center. The Applicant further asserts that when counsel’s office contacted the

Vermont Service Center Hotline, they were “advised that the brief and additional evidence submission was timely and would be forwarded to the AAO.” In support of his contentions, the Applicant submits two copies of his appeal brief cover letter, each showing a “received” stamp from the Vermont Service Center in December 2022 and in January 2023. The Applicant also submits a copy of an e-mail message from the Vermont Service Center Hotline to his counsel’s office.

Although the Applicant has provided evidence that he attempted to file his brief and submit additional evidence in support of the appeal, the documentation submitted on motion indicates that he did not send the brief directly to the AAO’s mailing address. The instructions for the Form I-290B provide the following mailing instructions for applicants who file a brief within 30 days of filing an appeal: “Any brief and/or evidence submitted after you file Form I-290B must be sent directly to the AAO, even if the appeal has not yet been transferred to the AAO. For the AAO’s mailing address, visit www.uscis.gov/aao.” Form I-290B, Instructions for Notice of Appeal or Motion, <https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf> (Dec. 2019 ed.), at 6 (Form I-290B Instructions); *see also* 8 C.F.R. § 103.2(a)(1) (providing that “[e]very form, benefit request, or other document must be submitted ... and executed in accordance with the form instructions” and that a “form’s instructions are . . . incorporated into the regulations requiring its submission”). Moreover, the e-mail message from the Vermont Service Center Hotline does not indicate that the brief and additional evidence submission was timely and would be forwarded to the AAO, as the Applicant indicates. Rather, the e-mail message specifically states that the service center “determined that the appeal was forwarded to the [AAO] at the following address” and proceeds to list the AAO’s mailing address. The e-mail message further advises the Applicant’s counsel to contact the AAO directly for information regarding this case. Here, absent evidence demonstrating that the Applicant followed the form instructions and mailed his brief and additional evidence to the correct mailing address, the Applicant has not provided new facts or new evidence that would overcome our decision to summarily dismiss his appeal. Accordingly, the motion to reopen will be dismissed.

ORDER: The motion to reopen is dismissed.