



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

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

In Re: 29322221

Date: DEC. 21, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust 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-1” nonimmigrant status. The Director of the Vermont Service Center (Director) 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.

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 dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of an individual admitted into the United States as a U nonimmigrant to that of a lawful permanent resident if, among other requirements, he or she has been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant and establishes that his or her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(3), (6).

Implementing regulations require a U adjustment applicant to establish, among other requirements, that she “[w]as lawfully admitted to the United States” as a U nonimmigrant, she “[c]ontinues to hold such status at the time of application,” and she “[h]as continuous physical presence for 3 years” in the United States. 8 C.F.R. § 245.24(b)(2)(i)-(ii), (b)(3). An applicant bears the burden of establishing eligibility and that discretion should be exercised in her favor. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(d)(11); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

The Applicant was granted U-1 nonimmigrant status from June 2018 to June 2022.<sup>1</sup> She filed her U adjustment application in late May 2021.<sup>2</sup> The Director determined that the Applicant was not eligible to adjust her status to that of a lawful permanent resident because, at the time of filing her U adjustment application, she did not demonstrate her physical presence in the United States for a continuous period of at least three years since her admission as a U-1 nonimmigrant as required by section 245(m)(2) of the Act and 8 C.F.R. § 245.24(a)(1), (b)(3).

On appeal, the Applicant contends that her prior counsel's performance was deficient and particularly egregious, and that she has met the requirements of *Matter of Lozada*, 19 I&N 637 (BIA 1988). She further contends that USCIS erred in accepting her U adjustment application before she established three years of continuous physical presence. She asks that USCIS exercise *nunc pro tunc* relief to remedy agency error and her prior counsel's ineffective assistance.

We acknowledge the Applicant's contentions on appeal. However, an applicant must be eligible for the requested benefit at the time of filing the application. 8 C.F.R. § 103.2(b)(1). When filing for adjustment of status, a U nonimmigrant must have been in valid U status for at least three years since the date of admission as a U nonimmigrant. *See* section 245(m)(1)(A) of the Act (stating that an individual must have "been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant"); 8 C.F.R. § 245.24(a)(1) (stating that continuous physical presence "means the period of time that the [individual] has been physically present in the United States and must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant"), 245.24(d)(9) (stating that a U adjustment application must include, in part, "an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years"). This requirement is reiterated in the relevant form instructions. *See* Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 30 (providing that "[b]oth principal and derivative applicants may file [a U adjustment application] only after they have been physically present in the United States for a continuous period of at least three years since being admitted as a U nonimmigrant"); *see also* 8 C.F.R. § 103.2(a)(1) (requiring that benefit requests must comply with form instructions, which are incorporated into the regulations).

Here, when the Applicant filed her U adjustment application in May 2021, she had not been physically present in the United States for a continuous period of at least three years since the date of her admission as a U-1 nonimmigrant in June 2018. Neither the statute nor the regulations provide for an exception to the requirement that an applicant be in lawful U status for at least three years at the time of filing. While we acknowledge the hardship to the Applicant that this may cause, we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold "the force of law" and must be adhered to by government officials). Although the Applicant has submitted numerous documents reflecting her continuous presence in the United States

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<sup>1</sup> The Applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status in April 2023, which remains pending at this time.

<sup>2</sup> The record indicates that USCIS rejected the Applicant's U adjustment application when she initially filed it in early May 2021.

while she was in U-1 status, at the time of filing her U adjustment application, she was not in U nonimmigrant status for at least three years since her admission as a U nonimmigrant, as required.

### III. CONCLUSION

The Applicant has not established that at the time of filing she had been continuously physically present in the United States for at least three years from an admission as a U nonimmigrant. She is consequently ineligible for adjustment of status under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.