



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

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

In Re: 29356330

Date: DEC. 28, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust Status of U Nonimmigrant

The Applicant, a native and citizen of Guatemala, seeks to become a lawful permanent resident (LPR) based on their derivative “U-3” 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 Adjust Status of U Nonimmigrant (U adjustment application), concluding that the record did not establish the Applicant was lawfully admitted as a U-3 nonimmigrant, and it did not include a full copy of her passport. 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 dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of LPR if the applicant establishes, among other requirements, that they were admitted to the United States as a U nonimmigrant. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(2)(i). The applicant must also demonstrate that they continue to hold such status at the time of application for adjustment of status. 8 C.F.R. § 245.24(b)(2)(ii).

Additionally, they must 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 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 three-year period in U status prior to the filing of the U adjustment application, or an equivalent travel document or explanation of why they do not have a passport. 8 C.F.R. § 245.24(d)(5).

When determining the age of a U derivative, we look to the “the date on which [the U principal] petitioned for [their U-1] status.” Section 214(p)(7)(A) of the Act. If the U derivative was “under 21 years of age on [such] date,” they continue to be classified as a child for purposes of U classification. *Id.*; see also section 101(b)(1) of the Act (defining “child” as “an unmarried person under [21] years of age.”).

Lawful admission contemplates both procedural regularity and compliance with substantive legal requirements. See *Matter of Longstaff*, 716 F.2d 1439, 1441-42 (5th Cir. 1983) (holding that the term “lawfully admitted” at section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), “denotes compliance with substantive legal requirements, not mere procedural regularity . . .”). An admission is not in compliance with substantive legal requirements if, at the time of admission, the individual was not entitled to it. See *Matter of Koloamatangi*, 23 I&N Dec. 548, 550 (BIA 2003) (holding, likewise in the context of section 101(a)(20) of the Act, that an individual was not “‘lawfully’ admitted for permanent residence status if, at the time such status was accorded, they were not entitled to it” and that the individual is therefore “deemed, *ab initio*, never to have obtained lawful permanent resident status once [the] original ineligibility . . . is determined in proceedings”).

II. ANALYSIS

The Applicant received U-3 nonimmigrant status from October 1, 2014, until September 30, 2018, as a child of her U-1 recipient mother. The Applicant timely filed her U adjustment application on August 20, 2018. The Director provided a thorough procedural history and list of evidence submitted, which we hereby incorporate by reference, and denied the U adjustment application on two grounds. First, the Director found that the Applicant did not provide all pages of her Guatemalan passport, which was valid from November 2014 until November 2019. Specifically, the Director stated it was missing pages 28 and 29. Otherwise, the Director determined that the Applicant submitted sufficient evidence of continuous physical presence. Second, the Director found that the Applicant was not lawfully admitted as a U-3 nonimmigrant and therefore she was ineligible to adjust status. In making this finding, the Director noted the Applicant’s Form I-918A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition), submitted in October 2012, listed her date of birth as [redacted] 1993, as did the accompanying *Inscripción de Nacimiento* (birth registration). The Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, submitted in December 2013, and U adjustment application also included this date of birth. However, the *Certificado de Nacimiento* (birth certificate) and Guatemalan passport included with the U adjustment application listed [redacted] 1991, as the Applicant’s date of birth. The Director determined that the Applicant would not have been under the age of 21 when her mother filed Form I-918, Petition for U Nonimmigrant Status (U petition), on October 16, 2012, and indicated the Applicant provided a fraudulent birth registration with her derivative U petition. Based on the record, the Director determined that the Applicant was not lawfully admitted as a U-3 nonimmigrant and therefore she was ineligible to adjust status.

On appeal, the Applicant submits a brief, employment authorization records, and affidavits from her and her mother. The issues before us are whether the Applicant submitted a complete copy of her Guatemalan passport, and whether she was lawfully admitted as a U-3 nonimmigrant. The record reflects that she previously provided a complete copy of the passport in question, including pages 28 and 29. As this was the only “missing” evidence of continuous physical presence, the record establishes she has met the continuous physical presence requirement. In regard to whether the

Applicant was lawfully admitted as a U-3 nonimmigrant, the Applicant asserts that neither she nor her mother checked the details of the birth registration upon receiving it; third-party form preparers mistakenly listed [redacted] 1993, as her date of birth; she never intended to submit a birth registration with incorrect information; and she had no intention of obtaining any benefit by fraud or misrepresentation. While we will not decide whether the Applicant committed fraud or misrepresentation, we note that she is not disputing that [redacted] 1991, is her actual date of birth. Furthermore, her birth certificate lists [redacted] 1991. The record reflects that the Applicant would not have been under the age of 21 when her mother filed her U petition, and she would not have been entitled to U-3 nonimmigrant status. An admission is not in compliance with substantive legal requirements if, at the time of admission, the individual was not entitled to it. *See Matter of Koloamatangi*, 23 I&N Dec. 548, 550 (BIA 2003). Therefore, the Applicant was not lawfully admitted as a U-3 nonimmigrant and is ineligible to adjust her status from U-3 nonimmigrant to that of LPR.

ORDER: The appeal is dismissed.