



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

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

In Re: 24954149

Date: FEB. 16, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant seeks to become a lawful permanent resident under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m) based on his “U” nonimmigrant status. The Director of the Nebraska 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 statement and copies of previously submitted evidence. An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 the issuance of a new decision.

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of a lawful permanent resident (LPR) based on having been granted U status. In addition, an applicant for adjustment of status under 245(m) must comply with the general eligibility and documentary requirements to adjust status at 8 C.F.R. § 245.5, which require that the applicant “have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.”

The record reflects that the Applicant, a native and citizen of Mexico, was granted U-1 status from December 2016 until December 2020, and timely filed the instant U adjustment application in October 2020. On November 10, 2021, the Director denied the application, determining that the Applicant had not complied with 8 C.F.R. § 245.5, because he did not provide an updated medical examination, as requested in the previously issued Request for Evidence (RFE). A review of the record indicates that the Applicant submitted an updated medical examination that was received on November 8, 2021, after the RFE was due. However, the Director did not review the medical examination prior to the issuance of the decision.

On appeal, the Applicant explains that he was unable to respond to the RFE in a timely manner because of financial difficulties in paying for the medical examination, and restrictions due to the COVID-19 pandemic. Because the Director has not reviewed the medical examination, we will remand the matter

to the Director to consider this evidence in the first instance, and further determine whether the Applicant has satisfied the remaining eligibility requirements to adjust his status to that of an LPR 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.