



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

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

In Re: 25214903

Date: FEB. 21, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) based on her “U” nonimmigrant status as a victim of qualifying criminal activity 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 to Adjust Status (U adjustment application). 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, “in the opinion” of USCIS, their “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) of the Act. The applicant must provide, in relevant part, evidence that they 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 meet this requirement, a U adjustment applicant must provide “an affidavit . . . that [they have] continuous physical presence.” 8 C.F.R. § 245.24(d)(9). The applicant must also provide 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, an equivalent travel document, or an explanation of why they do not have a passport. 8 C.F.R. § 245.24(d)(5).

Furthermore, all applicants for adjustment of status are “required to 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” applicable health-related grounds of inadmissibility, “shall be incorporated into the record.” 8 C.F.R. § 245.5. The instructions for the U adjustment application indicates that the civil surgeon must document their findings on Form I-693, Report of Medical Examination and Vaccination Record (medical examination). Instructions for Application to Register Permanent Residence or Adjust Status (Dec. 23, 2022 ed.), at 14, <https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf>. Additionally, the form

instructions specify that applicants “must submit certified police and court records for any criminal charges, arrests, or convictions [they] may have.”

The Applicant, a native and citizen of Mexico, filed her adjustment of status application in August 2020 based on her U nonimmigrant status. The Director issued a request for evidence (RFE) in January 2022 for copies of all pages of the Applicant’s passports and other evidence of her continuous physical presence, a medical examination, records relating to any arrests or convictions, and evidence that she is eligible for adjustment of status as a matter of discretion. The Director then denied the adjustment of status application, indicating that the Applicant had not submitted a full response to the RFE but instead replied only with a copy of the RFE itself, and therefore failed to provide the requested evidence.

On appeal, the Applicant states that she did submit all of the requested evidence with her RFE response, including 110 pages of records and a medical examination, and alleges that USCIS lost her submission. She provides a photocopy of her June 2022 RFE response, which includes a cover letter and brief, an index of submitted documents, a medical examination, a personal affidavit from the Applicant, documentation of her criminal history, letters of support, information about her U.S. citizen children, an affidavit regarding her continuous physical presence, copies of her passports, additional evidence of continuous physical presence, and tax records. The Applicant also now provides a new medical examination.

Upon review, the Applicant has provided new evidence that the Director has not had the opportunity to review. As such, 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 her 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.