



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

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

In Re: 24047769

Date: JAN. 5, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) under section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Status (adjustment application) and the matter is now before us on appeal. This office reviews the questions in this matter de novo. *See 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.

The Applicant is a 54-year-old citizen of Mexico who entered the United States without inspection in 2003. In February 2018, the Applicant was granted U-2 status from February 21, 2018 through February 20, 2022, based on his family member's victimization and assistance to law enforcement. The Applicant filed his adjustment application in March 2020. In June 2022, the Director denied the adjustment application, concluding that the Applicant was not eligible to adjust his status pursuant to section 245(m) of the Act because, at the time of filing his adjustment application, he did not demonstrate his physical presence in the United States for a continuous period of at least three years since his admission as a U-2 nonimmigrant.¹

On appeal, the Applicant maintains that he is eligible to adjust status because he applied for adjustment of status as an immediate relative of a U.S. citizen and not pursuant to section 245(m) of the Act, despite his "U" nonimmigrant status. In support, the Applicant submits a copy of the Form I-797, Notice of Action, establishing that a Form I-130, Petition for Alien Relative, was approved on his behalf in December 2014 as a "Parent of U.S. Citizen, 201(b) INA." The Applicant also submits a copy of his Form I-485, indicating under Part 2 that he was applying to adjust status based on a family-based immigrant category, specifically, "Immediate relative of a U.S. citizen, Form I-130." We will thus remand the matter to the Director to consider this evidence and further determine whether the Applicant is eligible to adjust status.

¹ U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant "admitted into the United States . . . under section 101(a)(15)(U) [of the Act]" to that of a lawful permanent resident provided that the noncitizen "has 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" and otherwise establishes that 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)(1) 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.