



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

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

In Re: 23752857

Date: JAN. 17, 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(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application). The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal the Applicant submits a brief and new evidence.

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 in its discretion adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, the applicant has been physically present in the United States for a continuous period of at least three years since the date of their admission as a U nonimmigrant. Section 245(m) of the Act; 8 C.F.R. § 245.24(b)(3).

The Applicant was granted U-1 status in April 2017 through April 2021. She timely filed her U adjustment application in May 2020. The Director denied this U adjustment application, concluding that the Applicant had not established her continuous physical presence in the United States for a period of at least three years since the date of her admission in U-1 status in April 2017, as required at section 245(m) of the Act. The Director also noted that the Applicant had not submitted an affidavit attesting to her continuous physical presence for this time period, as required at 8 C.F.R. § 245.24(d)(9).

On appeal, the Applicant submits relevant evidence to sufficient to establish her continuous physical presence during the requisite period. First, she provides the requisite affidavit, dated April 2022, in which she attests to her continuous physical presence in the United States for more than three years. She also submits a complete copy of her passport valid from February 2022 through February 2028 and a complete copy of her passport valid from June 2015 through June 2020 showing no departures from or arrivals into the United States during the documents’ respective validity periods. The

Applicant additionally provides an [] wire transfer statement showing her outgoing payments from the United States each month from June 2017 through July 2020. The Applicant further offers copies of her auto insurance policy with coverage from March to September 2017, 2018, 2019, 2020, and from September 2021 through March 2022. She includes copies of her [] credit card statements for each month from November 2017 through July 2018, from November 2018 to February 2019, and from November 2021 and January 2022. The Applicant also submits a February 2022 letter from her employer verifying her continuous employment there beginning in July 2019 as well as copies of paystubs from this employer from July 2019 through February 2022 inclusive. The evidence the Applicant submits on appeal is sufficient to establish, by a preponderance of the evidence, her continuous physical presence in the United States for a period of at least three years since the date of her admission into the United States in U status.¹

Based on this additional evidence, the Applicant has overcome the basis for the denial of her U adjustment application. Because the Director's decision addressed only this statutory ground for denial, and the Applicant did not have the opportunity to respond to additional grounds on appeal, we will remand the matter for the Director to determine, in the first instance, whether the Applicant has met the remaining eligibility criteria under section 245(m) of the Act and whether, as a matter of discretion, she has established that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ We note that the Applicant provides additional evidence which we have reviewed, including medical statements, [] credit card statements, and wage and tax statements, among other materials, but do not discuss it here as it addresses her physical presence for dates already covered in the documentation discussed above.