



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

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

In Re: 24400915

Date: JAN. 20, 2023

Appeal of Vermont Service Center Decision

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

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 (Director) denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant explains why she believes she is eligible for U nonimmigrant status. 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, the appeal will be dismissed.

**I. LAW**

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 bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes establishing that discretion should be exercised in their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. § 245.24(b)(6), (d)(11).

The Applicant, a citizen of Mexico, seeks to become an LPR based on her “U” nonimmigrant status as the victim of qualifying criminal activity who assisted law enforcement in the investigation of the criminal activity. *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.

## II. ANALYSIS

The Applicant was granted U-1 nonimmigrant classification on October 6, 2016, through October 5, 2020. She did not file her U adjustment application until October 6, 2020, one day after her U nonimmigrant status expired. The record on appeal also indicates that the Applicant has not filed a Form I-539, Application to Extend/Change Nonimmigrant Status, to extend her U-1 status. Accordingly, the Applicant was not in U nonimmigrant status when she filed her adjustment application as required by section 245(m) and the implementing regulation at 8 C.F.R. § 245.24(b)(2)(ii).

On appeal, the Applicant acknowledges that her application was late filed. She explains that she mailed the application on October 2, 2020, via priority express mail through the United States Postal Service (USPS), and it was to be delivered by October 5, 2020. The Applicant further claims that she “...called the Field Office in Charlotte, North Carolina on 09/30/2020 and . . . was told that the USCIS would take the date as received by the date that [USPS] received the envelope.” We note that an annotation on the mailing label shows that USPS estimated that the envelope would be delivered by October 5, 2020. However, while USPS may provide 2 days as the estimated shipping speed for priority express mail, such period is only an estimate, and the immigration regulations prescribe that the filing date of a benefit request is the date that USCIS actually receives the request at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i). Here, the Applicant's U nonimmigrant status expired on October 5, 2020, and USCIS did not receive the U adjustment until October 6, 2020. As such, the Director properly determined that the Applicant is not eligible for U adjustment of status because she did not hold U nonimmigrant status at the time of filing.

The Applicant is seeking adjustment of status as a U nonimmigrant under section 245(m) of the Act, which has no exception to the filing requirements. The implementing regulations require an applicant to establish that he or she was lawfully admitted to the United States as a U nonimmigrant and continues to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii). We sympathize with the difficulties the Applicant has faced in filing a timely U adjustment application. However, the statutory and regulatory requirement that a U adjustment applicant be in U nonimmigrant status at the time of filing is a substantive eligibility requirement that we may not disregard. *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

As the Applicant was not in U nonimmigrant status when she filed her adjustment application as required, she has not established her eligibility for lawful permanent residence under section 245(m) of the Act.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> This decision is without prejudice to the filing of a new U adjustment application after the approval of an extension should the Applicant file a Form I-539, Application to Extend Nonimmigrant Status. See USCIS Policy Memorandum USCIS PM-602-0032.2, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* 4, 9 (Oct. 4, 2016), <https://www.uscis.gov/legal-resources/policy-memoranda>.