



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

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

In Re: 24400927

Date: JAN. 24, 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 his “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 he believes he is eligible for U nonimmigrant status. This office 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, 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, among other requirements, he has been physically present in the United States for a continuous period of three years since the date of his admission as a U nonimmigrant and his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant “continue[] to hold such status at the time of [the filing of the U adjustment] application” 8 C.F.R. § 245.24(b)(2)(ii).

Applicants for U adjustment bear the burden of establishing eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was granted U-5 nonimmigrant classification on October 6, 2016, through October 5, 2020. He did not file his U adjustment application until October 6, 2020, one day after his 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 his U-5 status. Accordingly, the Applicant was not in U nonimmigrant status when he filed his 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 his application was late filed. He explains that he 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 he “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 the [USPS] received the envelope.” We note that an annotation on the mailing label shows that the USPS estimated that the envelope would be delivered by October 5, 2020. However, while the USPS may provide 2 days as the estimated shipping speed for priority express mail, such a 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 he 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 he filed his adjustment application as required, he has not established his eligibility for lawful permanent residence under section 245(m) of the Act.¹

ORDER: The appeal is dismissed.

¹ 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>.