



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

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

In Re: 24727455

Date: JAN. 25, 2023

Appeal of Nebraska 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 Nebraska Service Center (Director) denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief, and additional 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 dismiss the appeal.

I. LAW

USCIS may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, the U nonimmigrant has been physically present in the United States for a continuous period of three years since the date of admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1). U adjustment applicants must provide, among other requirements, a photocopy of all pages of all passports valid since the date of admission as a U nonimmigrant or, in the alternative, an equivalent travel document or a valid explanation of why they do not have a passport. 8 C.F.R. § 245.24(d)(5). To establish continuous physical presence for the requisite period, applicants must also provide “a signed statement . . . attesting to continuous physical presence” and “additional documentation.” 8 C.F.R. § 245.24(d)(9). In addition, in accordance with section 232(b) of the Act, and as implemented by regulation, 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; *see also* section 212(a)(1) of the Act (articulating the health-related inadmissibility grounds).¹

¹ The regulations provide for limited exceptions to this rule not applicable here. *See* 8 C.F.R. § 245.5 (exempting those who “entered the United States as a nonimmigrant spouse, fiancé, or fiancée of a United States citizen or the child of such [an individual and were] medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa”).

II. ANALYSIS

The Applicant first entered the United States without inspection, admission, or parole in March 2002. The Director approved the Applicant's U petition in May 2017, granting her U nonimmigrant status from May 2017 to May 2021. The Applicant subsequently filed the instant U adjustment application in December 2020.

The Director denied the application in January 2022, finding that the Applicant did not submit: a required Form I-693, Report of Medical Examination and Vaccination Record (medical examination report); sufficient evidence to establish continuous physical presence for a period of three years since the date of her admission as a U nonimmigrant; a statement of continuous physical presence; legible copies of all pages, of all passports that were valid during the period of U nonimmigrant status; evidence of the Applicant's cooperation with law enforcement in the investigation or prosecution of the qualifying criminal activity; and her birth certificate.

A. Medical Examination Report

As noted above, 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; *see also* section 212(a)(1) of the Act (articulating the health-related inadmissibility grounds). The relevant form instructions reiterate this requirement. Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 12 (stating that all U-based adjustment of status applicants "are required to have a medical examination to show that they are free from health conditions that would make them inadmissible"). Form instructions carry the weight of binding regulations. *See* 8 C.F.R. § 103.2(a)(1) ("Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions The form's instructions are hereby incorporated into the regulations requiring its submission."); *see also* 8 C.F.R. § 245.24(d)(1) (stating that each applicant for U-based adjustment of status must submit a U adjustment application "in accordance with the form instructions" with such instructions requiring a Form I-693).

On appeal, the Applicant does not submit the required medical examination report and states that "she is working on gathering . . . a Form I-693" and that she "intends to supplement the appeal within 30 days with any missing evidence." To date, no supplemental evidence has been received. Accordingly, she has not overcome this ground for denial of her U adjustment application.

B. Continuous Physical Presence and Passport

To establish eligibility for adjustment of status to that of an LPR under section 245(m) of the Act, an applicant must have been physically present in the United States for a continuous period of three years since the date of her admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act. U adjustment applicants must provide, among other requirements, a photocopy of all pages of all passports valid since the date of admission as a U nonimmigrant or, in the alternative, an equivalent travel document or a valid explanation of why they do not have a passport. 8 C.F.R. § 245.24(d)(5). To establish continuous physical presence for the requisite period, relevant regulations also require that the

applicant submit “a signed statement . . . attesting to continuous physical presence” and “additional documentation.” 8 C.F.R. § 245.24(d)(9). The regulations further specify that, “[i]f additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant’s continuous physical presence by specific facts[.]” *Id.*

On appeal, the Applicant states that she did not submit a copy of her passport because “she is working on gathering a full copy of her passport.” However, the Applicant submitted a statement attesting to her continuous physical presence as expressly required by 8 C.F.R. § 245.24(d)(9); a copy of her 2022 COVID-19 vaccination card; a copy of her unofficial school transcript showing an entry date of November 2016 and an exit date of June 2019; a copy of her 2021 wage and tax statement and an uncertified copy of her 2021 individual income tax return. We note that the Applicant also submitted a copy of her birth certificate, along with a translation.

However, because the Applicant did not submit her medical examination report or passport, we need not determine if she has submitted sufficient evidence of her continuous physical presence for a period of three years since the date of her admission as a U nonimmigrant in May 2017.

Upon de novo review, the Applicant has partially overcome the grounds for denial of her U adjustment application. However, the record, including that submitted on appeal, remains insufficient to establish the Applicant’s eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.