



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

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

In Re: 24047005

Date: JAN. 30, 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 denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that the record did not contain required documentation. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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.

I. LAW

U.S. Citizenship and Immigration Services may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, they have been physically present in the United States for a continuous period of three years since the date of their admission as a U nonimmigrant, and they establish 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) of the Act. To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, a photocopy of all pages of all passports that were valid during the three-year period in U nonimmigrant status prior to the filing of the U adjustment application, or an equivalent travel document or explanation of why they do not have a passport. 8 C.F.R. § 245.24(d)(5).

A U adjustment applicant requires 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 section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record. 8 C.F.R. § 245.5.

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of a LPR based on having been granted U nonimmigrant status. The Applicant's burden includes complying with and submitting the documentation described in the U adjustment

application's instructions. *See* 8 C.F.R. § 103.2(a)(1) (stating that every form, benefit request, or other document must be submitted and executed in accordance with form instructions which are incorporated into the regulations requiring its submission). U adjustment application instructions require applicants to submit a photocopy of their birth certificate issued by the appropriate civil authority from the country of their birth.

II. ANALYSIS

The record reflects that the Applicant, a native and citizen of Honduras, was granted U-1 nonimmigrant status from January 2017 until January 2021, and timely filed his U adjustment application in February 2020. In making the decision, the Director provided a list of evidence submitted by the Applicant with his U adjustment application and in response to a request for evidence. We incorporate that list into our decision. The Director denied the application on multiple grounds. First, the Director determined the Applicant had not submitted a complete copy of his Honduran passport, valid from April 12, 2013, to April 12, 2023, as it was missing pages six and seven. Second, the Director mentioned the Applicant had not submitted evidence of his birth in Honduras in the form of a *Copia de Folio del Libro de Nacimientos* (or *Inscripción de Nacimiento*), issued by the *Registro Nacional de las Personas*, in compliance with the U.S. Department of State Reciprocity Schedule for documentation of births in Honduras.¹ Next, the Director stated that the Applicant did not provide a valid Form I-693, Report of Medical Examination and Vaccination Record (medical examination). The medical examination lacked a signature from the civil surgeon and interpreter, and it contained conflicting information on the Applicant's completion of the COVID-19 vaccine series. Lastly, the Director noted that the Applicant appeared to have provided fraudulent information regarding his past military service on his Form I-589, Application for Asylum and Withholding of Removal. As such, he may have been inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation at the time he was granted U-1 nonimmigrant status, and therefore he may not have been eligible for U-1 nonimmigrant status. However, the Director did not discuss this issue in detail as the Applicant's U adjustment application was otherwise deniable.

On appeal, the Applicant submits a brief, a copy of pages six and seven of his Honduran passport, a copy of his *Copia de Folio del Libro de Nacimientos*, a new medical examination, a statement, documents related to his lack of a criminal record, and a document related to his military service. As the Applicant has provided new evidence that the Director has not had the opportunity to review, we will remand the matter to the Director to consider this evidence in the first instance, and further determine whether the Applicant has satisfied the remaining eligibility requirements to adjust his status to that of an LPR under section 245(m) 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.

¹ We note that the Department of State Reciprocity Schedule for Honduras only lists the *Copia de Folio del Libro de Nacimientos*, and not the *Inscripción de Nacimiento*, as an acceptable document to establish birth in Honduras. *U.S. Department of State Reciprocity Schedule for Honduras*, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Honduras.html>.