



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

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

In Re: 27062738

Date: JUNE 16, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident based on her derivative “U” nonimmigrant status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), because the Applicant was no longer in U nonimmigrant status on the filing date. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant contends that she has established eligibility for the benefit sought.

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.

To be eligible for adjustment of status as a U nonimmigrant, the applicant must demonstrate, among other eligibility criteria, that they were lawfully admitted to the United States as a U nonimmigrant and continue to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii).

The Applicant’s father filed a derivative U petition on the Applicant’s behalf, and on March 6, 2018, U.S. Citizenship and Immigration Services (USCIS) approved her derivative U-3 nonimmigrant status. The Applicant was in Ecuador at the time her U petition was approved, and she subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). DOS issued the Applicant’s visa on April 2, 2018, with an expiration date of September 30, 2018. The Applicant first entered the United States on May 9, 2018, and U.S. Customs and Border Protection admitted her in U status until September 30, 2018.

The Applicant filed her U adjustment application on June 1, 2021, and as noted above, the Director denied the application because the Applicant no longer held U nonimmigrant status on the filing date. On appeal, the Applicant asserts that she relied on the USCIS approval notice for her U petition, which granted her U status until March 5, 2022. She further asserts that she relied on an approved Form I-765, Application for Employment Authorization, which was based on her U-3 status, and the employment authorization approval notice also indicated that she held U-nonimmigrant status until March 5, 2022.

Here, the Applicant is a derivative family member who was outside the United States when her U petition was approved. The approval notice for the U petition specified that “[t]he approval of this petition does not grant any immigration status and does not guarantee your derivative family member will be found eligible for a visa” A derivative family member only receives U nonimmigrant status concurrently with approval of their U petition if they are in the United States at the time of approval. 8 C.F.R. § 214.14(f)(6)(i) (“When USCIS approves a Form I-918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien [U] . . . nonimmigrant status.”). For such derivative family members already in the United States, “a Form I-94, Arrival-Departure Record, indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status.” Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53028 (Sept. 17, 2007).

By contrast, a derivative family member who is outside of the United States at the time their U petition is approved does not obtain U status until their entry and admission into the United States on a U visa. 8 C.F.R. § 214.14(f)(6)(ii) (“When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval . . . [and] forward the approved [petition] to the [DOS]”). Subsequently, the derivative family member “should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant.” *Id.* at 53014. The period of authorized stay is determined at the time of admission, and “as with all other nonimmigrant classifications, the U nonimmigrant’s Form I-94 issued to evidence status will indicate the approved period of stay.” *Id.* at 53028.

The Applicant’s period of U nonimmigrant status was determined at the time of her admission into the United States. That status expired on September 30, 2018, prior to the filing of her U adjustment application.¹ Accordingly, the Applicant was not in U nonimmigrant status at the time of filing, as required under 8 C.F.R. § 245.24(b)(2)(ii). As the Applicant was not in U nonimmigrant status when she filed her U adjustment application, she is ineligible for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.

¹ We note here that although USCIS regulations provide for the extension of a U nonimmigrant visa by filing a Form I-539, Application to Extend/Change Nonimmigrant Status (extension of status application). 8 C.F.R. § 214.14(g)(2)(i). USCIS records do not reflect that the Applicant has filed an extension of status application.