



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

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

In Re: 25629897

Date: MAR. 9, 2023

Appeal of Vermont Service Center Decision

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

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 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. 8 C.F.R. § 103.3. 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.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if the applicant establishes, among other requirements, that they were admitted to the United States as a U nonimmigrant. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(2)(i). The applicant must also demonstrate that they continue to hold such status at the time of application for adjustment of status. 8 C.F.R. § 245.24(b)(2)(ii). 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).

The Applicant filed a Form I-918, Petition for U Nonimmigrant Status, in December 2013, which was approved in February 2017, with validity dates from February 15, 2017, to February 14, 2021.¹ She filed her U adjustment application on February 24, 2021. The record also indicates that the Applicant has not filed a Form I-539, Application to Extend/Change Nonimmigrant Status, to extend her U-1 status. On October 5, 2022, the Director denied the U adjustment application because the Applicant was no longer in U nonimmigrant status on the filing date and was, therefore, ineligible to adjust status.

On appeal, the Applicant asserts that U adjustment application filing date should be based on the date of mailing, rather than the date of receipt, and that her U adjustment application was sent to USCIS before her U nonimmigrant status expired. The Applicant submitted a United States Postal Service (USPS) receipt and tracking printout indicating her U adjustment application was accepted by USPS on February 11, 2021. Through counsel, the Applicant argues that “pursuant to the USCIS Policy Manual, for applications and petitions that are sent by commercial courier, USCIS considers the date on the courier receipt as the postmark date for purposes of filing.” USCIS Policy Alert PA-2020-13,

¹ The Petitioner had been placed on a waiting list for U-1 nonimmigrant status in January of 2015 as the statutory cap for U-1 nonimmigrant status had been reached.

Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements Final Rule 1 (Sep. 2, 2020), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200902-FeeRule.pdf>. However, the Policy Alert continues to explain that the postmark date is used to determine the appropriate fee amount that must accompany certain immigration and naturalization benefit requests. Any application, petition, or request postmarked on or after the final rule effective date of October 2, 2020, must be accompanied with the fees established by the final rule. The Applicant also asserts that pursuant to 27 C.F.R. § 70.305, “a document shall be deemed to be filed on the date of the postmark in which the document was mailed.” But the Code of Federal Regulations Title 27 contains the codified federal laws and regulations pertaining to alcohol, tobacco and firearms, and is not relevant to immigration and nationality. Specifically, section 70.305 defines documents as “any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provisions of 26 U.S.C. enforced and administered by the [Alcohol and Tobacco Tax and Trade] Bureau.” 27 C.F.R. § 70.305(b).

Immigration regulations prescribe that the filing date of a benefit request is the date that USCIS 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 February 15, 2021, and USCIS did not receive the U adjustment application until February 24, 2021. 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). 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 U adjustment application as required, she has not established her eligibility for lawful permanent residence under section 245(m) of the Act.²

ORDER: The appeal is dismissed.

² 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>.