



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

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

In Re: 24446082

Date: MAR. 9, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status of a 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-2” nonimmigrant status as the spouse of a victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application) because the Applicant had not submitted an acceptable copy of his birth certificate, as required. The Applicant filed an appeal of the Director’s decision with our office. We dismissed the appeal, determining that the Applicant had not provided the required birth certificate or acceptable proof to allow an alternate document to be considered. The Applicant has filed a motion to reopen and reconsider our decision. Upon review, we will grant the motion to reopen and remand the matter to the Director. The motion to reconsider is moot.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought. The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

USCIS may adjust the status of a U-2 nonimmigrant to that of an LPR when the noncitizen’s 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)(1)(B) of the Act. To be granted LPR status, an applicant must file form I-485 and meet all other eligibility requirements. 8 C.F.R. § 245.24(d)(1). Form instructions have the weight of regulations. 8 C.F.R. § 103.2(a)(1). The instructions for filing Form I-485 indicate that applicants must submit a foreign birth certificate “issued by the appropriate civil authority” and directs applicants to the U.S. Department of State’s visa reciprocity and civil documents table. USCIS, *Instructions for Form I-485, Application to Register Permanent Residence or Adjust Status*, <https://www.uscis.gov/i-485>.

II. ANALYSIS

The Applicant was granted U-2 status from October 1, 2015, until September 30, 2019, and timely filed a U adjustment application in March 2019. The Director issued a request for evidence (RFE) noting that the Applicant had provided a copy of the *Acta de Nacimiento* (Acta), which was not the document listed by the State Department. The Director advised the Applicant to submit a copy of the *Folio del Libro de Nacimientos* (Folio). In response, the Applicant submitted a certified copy of the Acta. The Director denied the application, finding that the Applicant had not satisfied his evidentiary burden, as he had not provided the Folio or met the evidentiary requirements to use secondary evidence. 8 C.F.R. § 103.2(b)(1), (2).

On appeal, the Applicant provided an explanation for the failure to provide the Folio, citing the difficulties in obtaining documentation during the COVID-19 pandemic. We determined that the Director's decision was correct and dismissed the appeal, as the Folio had still not been provided and the evidence of record did not allow us to accept the Acta as alternative secondary evidence.

On motion, the Applicant provides a copy of the required Folio. The Applicant notes that the Folio was previously provided via a supplemental filing made on appeal but not considered. The provision of the Folio is new evidence sufficient to satisfy the requirements of a motion to reopen. Because this evidence is directly relevant to the Director's ground for denial of the Applicant's U adjustment application, we will remand the matter for further consideration of whether the Applicant has satisfied the requirements of 8 C.F.R. § 103.2(b)(1) and otherwise established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reopen is granted and the matter is remanded for the entry of a new decision.