



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

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

In Re: 25785455

Date: MAR. 16, 2023

Appeal of Nebraska 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 Nebraska 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 “admitted into the United States . . . under section 101(a)(15)(U) [of the Act]” to that of a lawful permanent resident provided that she “has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant” and otherwise establishes that her “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) of the Act.

Implementing regulations require a U adjustment applicant to establish, among other requirements, that she “[w]as lawfully admitted to the United States” as a U nonimmigrant, she “[c]ontinues to hold such status at the time of application,” and she “[h]as continuous physical presence for 3 years” in the United States. 8 C.F.R. § 245.24(b)(2)(i)-(ii), (b)(3). An applicant bears the burden of establishing eligibility and that discretion should be exercised in her favor. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(d)(11); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

USCIS granted the Applicant U-1 status from October 4, 2018, through October 3, 2022. Less than three years later, she filed her U adjustment application on September 17, 2021. The Director determined that the Applicant was not eligible to adjust her status to that of a lawful permanent resident (LPR) because, at the time of filing her U adjustment application, she did not demonstrate her physical presence in the United States for a continuous period of at least three years since her admission as a U-1 nonimmigrant.

On appeal, the Applicant states, “I am demonstrating that I do qualify and that I have sufficien[t] evidence that I have been physically in the US at least from 2018-2022.” She also submits evidentiary documentation dated from 2018 through 2022 including, but not limited to, monthly bank account

statements; insurance statements; pay records; tax documents; and utility statements. In addition, the record includes a 2022 letter of support from her pastors, indicating her attendance, membership, and participation at their church located in Northridge, California, for more than twelve years.

As a threshold requirement, an applicant must be eligible for the requested benefit at the time of filing the application. 8 C.F.R. § 103.2(b)(1). When filing for adjustment of status, a U nonimmigrant must have been in valid U status for at least three years since the date of admission as a U nonimmigrant. *See* section 245(m)(1)(A) of the Act (stating that an individual must have “been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant”); 8 C.F.R. § 245.24(a)(1) (stating that continuous physical presence “means the period of time that the [individual] has been physically present in the United States and must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant”), 245.24(d)(9) (stating that a U adjustment application must include, in part, “an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years”). This requirement is reiterated in the relevant form instructions. *See* Form I-485, Instructions for Application to Register Permanent Residence or Adjust, at 31 (providing that “[b]oth principal and derivative applicants may file [a U adjustment application] only after they have been physically present in the United States for a continuous period of at least three years since being admitted as a U nonimmigrant”); *see also* 8 C.F.R. § 103.2(a)(1) (requiring that benefit requests must comply with form instructions, which are incorporated into the regulations).

Here, the Applicant was not physically present in the United States for a continuous period of at least three years since the date of her admission as a U-1 nonimmigrant until October 4, 2021. She filed her U adjustment application on September 17, 2017, more than two weeks prior to that date. Neither the statute nor the regulations provide for an exception to the requirement that an applicant be in lawful U status for at least three years at the time of filing. While we acknowledge the hardship to the Applicant that this may cause, we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold “the force of law” and must be adhered to by government officials). Although the Applicant has submitted numerous documents reflecting her continuous presence in the United States while she was in U-1 status, at the time of filing her U adjustment application, she was not in U nonimmigrant status for at least three years since her admission as a U nonimmigrant, as required.

The Applicant has not established that she was in U nonimmigrant status for at least three years since the date of her admission as a U nonimmigrant when she filed her U adjustment application. Accordingly, she has not established eligibility for lawful permanent residency under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.