



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

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

In Re: 25334947

Date: MAR. 30, 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 (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 (Director) denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. 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.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, he has been physically present in the United States for a continuous period of three years since the date of his admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act.

The Applicant, a native and citizen of Mexico, was granted U nonimmigrant status on November 9, 2017. He filed his adjustment application on October 20, 2020, after having been in U status for two years and eleven months. The Director denied the application, concluding that the Applicant was ineligible because he had not accrued three years of continuous physical presence since the date of his admission as a U nonimmigrant to the filing of his U adjustment application.

On appeal, the Applicant acknowledges that his former attorney filed his U adjustment application 27 days before he was able to demonstrate three years of continuous presence in the United States after his grant of U nonimmigrant status. He argues however, that he was present in the United States for those 27 days, and submits evidence of that presence through November 2020, the earliest date on which he could have accrued the requisite three years of continuous physical presence. He maintains that he has no other avenues of immigration relief and the early filing of his U adjustment application was through no fault of his own. He asks that we reverse the Director’s decision in the interests of equity.

We acknowledge the Applicant’s arguments on appeal. However, the Act and regulations do not permit an applicant to accrue the minimum continuous physical presence while the adjustment

application is pending. Applicants for immigration benefits must establish their eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). The Act, regulations, and form instructions all clarify that an applicant for U adjustment must demonstrate his accrual of at least three years of continuous physical presence in the United States in U status at the time of filing. *See* section 245(m)(1)(A) of the Act and 8 C.F.R. § 245.24(b)(3)(stating the requirement of three years of continuous physical presence). *See also* 8 C.F.R. § 245.24(d)(5), (9) (requiring applicants to submit evidence of their three-year period of continuous physical presence with their application in order to establish eligibility for U adjustment); Instructions for Application to Register Permanent Residence or Adjust Status, USCIS Form I-485 p. 30, <https://www.uscis.gov/i-485> (explaining that “both principal and derivative applicants may file Form I-485 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 [and] must continue to be physically present through the date that users makes a decision on [the] application.”).

Here, the Applicant acknowledges that he did not have three years of continuous physical presence in U nonimmigrant status when he filed his application. By submitting evidence of his continued presence in the United States through November 2020, he asserts that he has now accrued the requisite period of continuous presence and should now be found eligible. However, this new evidence does not overcome the Director’s ground for dismissal. As stated above, the Applicant must have established his eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). Because he did not accrue at least three years of continuous physical from his admission as a U nonimmigrant to the date of filing his U adjustment application, the Applicant has not met the eligibility requirements for U adjustment. *See* section 245(m)(1)(A) of the Act (requiring that an applicant “has been physically present in the United States for a continuous period of at least 3 years”; 8 C.F.R. § 245.24(b)(3)(stating that to be eligible, an applicant must have “continuous physical presence for 3 years”).

As the Applicant has not demonstrated his eligibility for adjustment of status under section 245(m) of the Act, the application will remain denied.

ORDER: The appeal is dismissed.