



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

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

In Re: 29609255

Date: DEC. 13, 2023

Appeal of Nebraska Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) based on her “U” nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m).

The Director of the Nebraska Service Center denied the application, concluding that the record did not establish that the Applicant was in U nonimmigrant status at the time she filed her Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. 8 C.F.R. § 103.3.

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, they have been physically present in the United States for a continuous period of three years since the date of their admission as a U nonimmigrant and their continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant “continue[] to hold such status at the time of [the filing of the U adjustment] application” 8 C.F.R. § 245.24(b)(2)(ii).

The Applicant, a native and citizen of Mexico, filed her Form I-918, Petition for U Nonimmigrant Status (U petition), in January 2014, and the U petition was approved in April 2017. The Applicant was granted U nonimmigrant status from that date until April 2021, and she filed her U adjustment application in November 2021. After review, the Director denied the application, concluding that as the Applicant’s U nonimmigrant status expired in April 2021, and the record did not reflect that she had filed a Form I-539, Application to Extend/Change Nonimmigrant Status (extension application), she was ineligible for adjustment of status.

On appeal, the Applicant submits a letter, contending that she attempted to submit an extension application in February 2021, but “for unknown reason it was returned” to her. The Applicant claims that she filed the extension application because she needed to obtain a new passport for her daughter, and due to the COVID pandemic, they faced “challenges beyond [their] control.” She further states that she “did everything in [her] power to comply” with the immigration regulations and asks that we excuse the untimely filing of her U adjustment application. A review of the record does not indicate that the Applicant has subsequently attempted to file another extension application, or received an extension of her U nonimmigrant status, and as such, her U nonimmigrant status remains expired. Although we recognize the hardship to the Applicant and her family that this result may cause, we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry “the force and effect of law”). Further, we lack the authority to waive or disregard any of the Act’s requirements, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695 (1974) (“So long as this regulation is extant it has the force of law.”). Accordingly, she is not eligible for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.