



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

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

In Re: 27009966

Date: JUN. 09, 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) under section 245(m), 8 U.S.C. § 1255(m) of the Immigration and Nationality Act (the Act), based on his “U” nonimmigrant status as the child of an individual granted U-1 status. The Director of the Nebraska Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), as well as the Applicant’s subsequent motion to reopen and reconsider; the Director found that the record did not establish that the Applicant had accrued three years of continuous physical presence at the time of filing the 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, the U nonimmigrant has been physically present in the United States for a continuous period of three years since the date of admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1). Implementing regulations require a U adjustment applicant to establish, among other requirements, that they were “lawfully admitted to the United States” as a U nonimmigrant, they hold U nonimmigrant status at the time of application, and they can establish “continuous physical presence for 3 years” in the United States. 8 C.F.R. § 245.24(b)(2)(i)-(ii), (b)(3).

USCIS granted the Applicant U-3 status from June 7, 2018, through June 6, 2022. The Applicant was admitted to the United States as a U nonimmigrant on May 18, 2019. Less than three years later, he filed his U adjustment application on January 21, 2022. The Director determined that the Applicant was not eligible to adjust his status to that of a lawful permanent resident because, at the time of filing the U adjustment application, he did not demonstrate his physical presence in the United States for a continuous period of at least three years since his admission as a U-3 nonimmigrant.

The Applicant acknowledges that three years had not yet accrued at the time of filing the U adjustment application. However, he argues that three years had passed when the Director issued the initial decision in July 2022, and USCIS regularly reaches decisions based on the facts on record at the time of decision rather than the time of filing. He contends that the Director erred by calculating the time that had accrued when the U adjustment application was filed rather than when it was decided.

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”). The application procedures for U nonimmigrants require applicants to submit evidence of continuous physical presence for at least three years, supported by a signed affidavit by the applicant attesting to continuous physical presence during the three-year period. 8 C.F.R. § 245.24(d)(9). This requirement is reiterated in the relevant form instructions. *See* Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 30 (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 his admission as a U-3 nonimmigrant; given his admission in May 2019, the three-year period did not accrue until May 2022. He filed his U adjustment application in January 2022, several months 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. The Applicant was not in U nonimmigrant status for at least three years before filing to adjust status, as required.

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

ORDER: The appeal is dismissed.