



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

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

In Re: 28859420

Date: NOV. 2, 2023

Appeal of Vermont 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her “U” nonimmigrant status.

The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status (U adjustment application), concluding that the Applicant did not establish eligibility to adjust her status because she did not provide all evidence required by the regulations and specifically requested. On appeal, the Applicant submits a brief and additional evidence.

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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other eligibility 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. Section 245(m)(1)(A) of the Act. To demonstrate continuous physical presence, the U adjustment applicant must provide certain evidence required by regulations, which includes an affidavit from the applicant that they have continuous physical presence in the United States for at least three years. 8 C.F.R. § 245.24(d)(9); 8 C.F.R. § 245.22. In addition, U adjustment applicants must comply with the general eligibility and documentary requirements described in the regulation at 8 C.F.R. § 245.5, which provides that they must “have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act,¹ shall be incorporated into the record.” The Form I-693, Report of Medical Examination and Vaccination Record, instructions require a USCIS-designated civil surgeon to fill out the worksheet in Part 10 of the form relating to vaccinations and to

¹ Section 212(a)(1)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(1)(A)(ii), provides in relevant part that a noncitizen who seeks adjustment of status to that of an LPR, and who has failed to present documentation of having received vaccination against certain vaccine-preventable diseases, is inadmissible.

indicate whether the applicant has completed all medically appropriate and available vaccination requirements and, if not, whether they may be eligible for blanket waivers of some vaccines. *See* Instructions for Form I-693, at 6, <https://www.uscis.gov/i-693>. The applicant must then submit the Form I-693 completed by the civil surgeon to USCIS in a sealed envelope. *Id.* at 1.

The record reflects that the Applicant, a native and citizen of Honduras, was granted U-1 status from June 2017 until June 2021, and timely filed the instant U adjustment application in March 2021. The Director subsequently issued a request for evidence (RFE) asking the Applicant to submit, in part, evidence that she has been continuously physically present in the United States for three years since June 2017, including a self-affidavit attesting to her continuous physical presence in the United States, as well as a Form I-693, completed and signed by a designated civil surgeon, in a sealed envelope. The Applicant timely responded to the RFE.

As stated, the Director denied the U adjustment application, finding that the Applicant's response did not include the requisite personal statement concerning her continuous physical presence in the United States, and the Form I-693 she submitted was incomplete because the civil surgeon did not administer the required hepatitis B vaccine.

On appeal, the Applicant submits a newly executed Form I-693, which reflects that she has received the hepatitis B vaccine in April 2023. She also provides a personal statement declaring under penalty of perjury that she has "continuously resided in the United States throughout [her] U Nonimmigrant Status and that during this time [she] never left the United States." Because the Applicant has provided new evidence, which the Director has not yet had an opportunity to review, we will remand the matter to the Director to consider it in the first instance, and to determine whether the Applicant has satisfied the remaining eligibility criteria to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.