



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

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

In Re: 29160461

Date: NOV. 15, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident based on their “U” nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director of the Vermont Service Center denied the Form I-485, Application to Adjust Status of U Nonimmigrant (U adjustment application), concluding that the record did not establish the Applicant provided a legible copy of all pages of all passports valid during the required period of continuous physical presence. We dismissed a subsequent appeal. The matter is now before us on motion to reopen.

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). Upon review, we will grant the motion and remand the matter for further proceedings.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our prior decision, which we incorporate here by reference, we determined that the Applicant provided a legible copy of all pages of her Mexican passports valid from December 29, 2017, to December 29, 2023; September 15, 2014, to September 15, 2017; and June 13, 2011, to June 13, 2014.¹ However, we noted the Applicant did not submit a copy of the passport issued on May 1, 2019, and valid through May 1, 2022, which the Director stated she only provided a biographic page for. We also mentioned the Applicant did not provide an explanation why a complete copy of this passport was omitted from her request for evidence response or her appeal as required by 8 C.F.R.

¹ We stated this passport was irrelevant because its validity period preceded the Applicant’s period of U nonimmigrant status, which was from March 8, 2017, to March 7, 2021.

§ 245.24(d)(9). Therefore, we dismissed the Applicant's appeal for not providing sufficient evidence of her continuous physical presence.

On motion, the Applicant states that she never had a passport issued on May 1, 2019, and valid through May 1, 2022, and therefore she could not provide pages for such passport. The Applicant submits a letter from the Deputy Consul General, Consulate General of Mexico in Atlanta, who reviewed her file and provided a list of documents issued to her. This list includes the three passports for which she provided copies of previously, and it did not list a passport issued on May 1, 2019. Furthermore, the biographic page of the passport in the record issued on May 1, 2019, and valid through May 1, 2022, belongs to the Applicant's daughter. Based on the above, the Applicant has established that she did not have a passport issued on May 1, 2019, and valid through May 1, 2022. The record therefore includes a legible copy of all pages of all passports valid during the required period of continuous physical presence.

The Director did not otherwise determine whether the Applicant satisfied the remaining eligibility criteria at section 245(m) of the Act, including whether her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and, accordingly, whether a favorable exercise of discretion is warranted. Because the only ground for denial of the Applicant's U adjustment application has been overcome on motion, the matter will be remanded for the issuance of a new decision.

ORDER: The motion to reopen is granted and the matter remanded for entry of a new decision consistent with the foregoing analysis.