



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

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

In Re: 29000060

Date: NOV. 16, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or Adjust Status (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. The Director of the Nebraska Service Center (Director) denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and we subsequently dismissed the Applicant's appeal. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will grant the motion to reopen and remand the matter to the Director for the issuance of a new decision.

A U nonimmigrant may adjust status to that of an LPR at the discretion of U.S. Citizenship and Immigration Services (USCIS) unless USCIS determines, based on affirmative evidence, that the U adjustment applicant unreasonably refused to provide assistance in a criminal investigation or prosecution. Section 245(m) of the Act. To establish eligibility, the applicant must demonstrate that since being granted U nonimmigrant status, he or she has not unreasonably refused to provide assistance in the investigation or prosecution of the qualifying criminal activity that formed the basis of the underlying U nonimmigrant status. 8 C.F.R. §§ 245.24(a)(5), (b)(5).¹ A U adjustment applicant must submit "[e]vidence pertaining to any request made . . . by an official or law enforcement agency for assistance in an investigation or prosecution of persons in connection with the qualifying criminal activity, and the [applicant's] response to such request." 8 C.F.R. § 245.24(d)(8)²

A U nonimmigrant must also establish physical presence 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). U adjustment applicants must provide, among other requirements, a photocopy of all pages of all passports valid since the date of admission as a U nonimmigrant or, in the alternative, an equivalent travel document or a valid explanation of why they do not have a passport. 8 C.F.R.

¹ The record establishes that the Applicant was granted derivative U nonimmigrant status (U-3) as a qualifying family member of a person granted U-1 status. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii).

² Such evidence may include a newly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), or a signed statement from a law enforcement agency or official affirming that the applicant did not unreasonably refuse to comply with reasonable requests for assistance, or "other evidence describing whether or not the alien received any request to provide assistance in a criminal investigation or prosecution, and the alien's response to any such request." 8 C.F.R. § 245.24(e).

§ 245.24(d)(5). To establish continuous physical presence for the requisite period, applicants must also provide “a signed statement . . . attesting to continuous physical presence” and “additional documentation.” 8 C.F.R. § 245.24(d)(9). In addition, in accordance with section 232(b) of the Act, and as implemented by regulation, all applicants for adjustment of status are “required to 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” applicable health-related grounds of inadmissibility, “shall be incorporated into the record.” 8 C.F.R. § 245.5; *see also* section 212(a)(1) of the Act (articulating the health-related inadmissibility grounds).

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal.

The Director denied the U adjustment application finding that the Applicant did not submit: a required Form I-693, Report of Medical Examination and Vaccination Record (medical examination report); sufficient evidence to establish continuous physical presence for a period of three years since the date of her admission as a U nonimmigrant; a statement of continuous physical presence; legible copies of all pages of all passports that were valid during the period of U-3 nonimmigrant status; evidence of the Applicant’s cooperation with law enforcement in the investigation or prosecution of the qualifying criminal activity; and her birth certificate.

In our decision to dismiss the appeal, incorporated here by reference, we noted that the Applicant submitted a statement attesting to her continuous physical presence as expressly required by 8 C.F.R. § 245.24(d)(9); a copy of her 2022 COVID-19 vaccination card; a copy of her unofficial school transcript showing an entry date of November 2016 and an exit date of June 2019; a copy of her 2021 wage and tax statement and an uncertified copy of her 2021 individual income tax return. We also noted that the Applicant submitted a copy of her birth certificate, along with a translation. However, because the Applicant had not addressed all the deficiencies raised by the Director, we dismissed the appeal.

With the instant motion, the Applicant submits a medical examination report, passport pages, and additional evidence to establish three years of continuous physical presence since her admission as a U-3 nonimmigrant. Considering the documentation submitted on appeal and with the instant motion, we find it appropriate to remand the matter for the Director to reevaluate the record in its entirety to determine whether the Applicant has satisfied the eligibility requirements for adjustment of status under section 245(m) of the Act.

ORDER: The motion to reopen is granted, and the matter is remanded to the Director for the entry of new decision.