



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

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

In Re: 29042598

Date: NOV. 21, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of a 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(m), based on her “U-2” nonimmigrant status. The Director of the Vermont Service Center (Director) denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and the matter is now before us on appeal.

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.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of an individual admitted into the United States as a U nonimmigrant to that of a lawful permanent resident if, among other requirements, he or she has been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant and establishes that his or her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(3), (6).

Implementing regulations require a U adjustment applicant to establish, among other requirements, that he “[w]as lawfully admitted to the United States” as a U nonimmigrant, he “[c]ontinues to hold such status at the time of application,” and he “[h]as continuous physical presence for 3 years” in the United States. 8 C.F.R. § 245.24(b)(2)(i)-(ii), (b)(3). An applicant bears the burden of establishing eligibility and that discretion should be exercised in her favor. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(d)(11); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was granted “U-2” nonimmigrant status from November 2017 to November 2021. She filed her U adjustment application in November 2020. The Director determined that the Applicant was not eligible to adjust her status to that of a lawful permanent resident because, at the time of filing her U adjustment application, she did not demonstrate her physical presence in the United States for a continuous period of at least three years since her admission as a U-2 nonimmigrant as required by section 245(m)(2) of the Act and 8 C.F.R. § 245.24(a)(1), (b)(3).

On appeal, the Applicant argues that she met the continuous presence requirement as of the date of adjudication of her U adjustment application pursuant to 8 C.F.R. § 245.24(a)(1). Additionally, she argues that 8 C.F.R. § 103.2(b)(2) refers to general filing and eligibility requirements not U adjustment applications, and applying both regulations leads to inconsistent and absurd results.

While the regulation at 8 C.F.R. § 245.24(a)(1) requires that the period of continuous physical presence must be maintained “through the date of the conclusion of adjudication of the application for adjustment of status,” U adjustment applicants must accrue at least three years of continuous physical presence before filing. *See* Section 245(m)(1)(A) of the Act (requiring that the applicant “*has been* physically present in the United States for a continuous period of at least 3 years” (emphasis added)); 8 C.F.R. § 245.24(b)(3) (stating that to be eligible, an applicant must have “continuous physical presence for 3 years”). Moreover, the regulation is clear that applicants for immigration benefits must establish their eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). For U adjustment applicants, the Act, regulations and form instructions all clarify that the applicant must show the accrual of at least three years of continuous physical presence in the United States in U status at the time of filing. *See* section 245(m)(1)(A) of the Act and 8 C.F.R. § 245.24(b)(3) (stating the requirement of three years of continuous physical presence); *see also* 8 C.F.R. § 245.24(d)(5), (9) (requiring applicants to submit evidence of their three-year period of continuous physical presence with their application in order to establish eligibility for U adjustment); Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 30 (explaining that “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 [and must] continue to be physically present through the date of . . . decision on [the] application.”).

We acknowledge the Applicant’s arguments on appeal. However, we reiterate that the Applicant was not physically present in the United States for a continuous period of at least three years since the date of her admission as a U-2 nonimmigrant until November 27, 2020. She filed her U adjustment application on November 16, 2020, one week and four days 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. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold “the force of law” and must be adhered to by government officials). Although the Applicant argues that she met the continuous presence requirement, at the time of filing her U adjustment application, she was not in U nonimmigrant status for at least three years since her admission as a U nonimmigrant, as required.

III. CONCLUSION

The Applicant has not established that at the time of filing she had been continuously physically present in the United States for at least three years from an admission as a U nonimmigrant. The Applicant is consequently ineligible for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.