



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29182014

Date: NOVEMBER 21, 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his “U” nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. 8 C.F.R. § 103.3. 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 dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if the applicant establishes, among other requirements, that they were admitted to the United States as a U nonimmigrant. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(2)(i). The applicant must also demonstrate that they continue to hold such status at the time of application for adjustment of status. 8 C.F.R. § 245.24(b)(2)(ii).

II. ANALYSIS

In 2017, the Applicant filed a Form I-918, Petition for U Nonimmigrant Status, which USCIS approved, according him U-1 nonimmigrant status from March 6, 2017, to March 5, 2021. On March 9, 2021, he filed the instant U adjustment application.¹ Accordingly, the Applicant was not in U nonimmigrant status when he filed his adjustment application as required by section 245(m) and the implementing regulation at 8 C.F.R. § 245.24(b)(2)(ii).

On appeal, the Applicant asserts that he mailed his adjustment application on March 4, 2021, via one-day priority express mail through the United States Postal Service (USPS), and it was to be delivered

¹ The record on appeal does not indicate that the Applicant has filed a Form I-539, Application to Extend/Change Nonimmigrant Status, to extend his U-1 status.

on March 5, 2021. The Applicant also submits documentation from USPS indicating that his application was missent to Omaha, Nebraska instead of Lincoln, Nebraska. He contends that because his application was late due to circumstances beyond his control, USCIS should waive the late filing.

The Applicant is seeking adjustment of status as a U nonimmigrant under section 245(m) of the Act, which has no exception to the filing requirements. The implementing regulations require an applicant to establish that they were lawfully admitted to the United States as a U nonimmigrant and continues to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii). We acknowledge that the Applicant intended to file his application before the expiration of his status. However, the statutory and regulatory requirement that a U adjustment applicant be in U nonimmigrant status at the time of filing is a substantive eligibility requirement that we may not disregard. *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations). Further, while USPS may offer one-day shipping for priority express mail, such a period is only an estimate, and the immigration regulations prescribe that the filing date of a benefit request is the date that USCIS actually receives the request at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i). Here, the Applicant's U nonimmigrant status expired on March 5, 2021, and USCIS did not receive the U adjustment until March 9, 2021. As such, the Director properly determined that the Applicant is not eligible for U adjustment of status because he did not hold U nonimmigrant status at the time of filing.²

ORDER: The appeal is dismissed.

² This decision is without prejudice to the filing of a new U adjustment application after the approval of an extension should the Applicant file a Form I-539, Application to Extend Nonimmigrant Status. See USCIS Policy Memorandum USCIS PM-602-0032.2, Extension of Status for T and U Nonimmigrants (Corrected and Reissued) 4, 9 (Oct. 4, 2016), <https://www.uscis.gov/legal-resources/policy-memoranda>.