



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

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

In Re: 29461697

Date: NOV. 23, 2023

Appeal of Nebraska Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to adjust his status to that of 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 Applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status (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). On appeal, the Applicant submits his own statement, photographs, and a letter of support from his spouse. Upon de novo review, we will dismiss the appeal.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, he has been physically present in the United States for a continuous period of three years since the date of his admission as a U nonimmigrant and his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant “continue[] to hold such status at the time of [the filing of the U adjustment] application” 8 C.F.R. § 245.24(b)(2)(ii).

The Applicant, a citizen of Mexico, was granted U nonimmigrant status from May 23, 2018, to May 22, 2022. He filed the instant U adjustment application on June 13, 2022. The Director concluded that the Applicant did not continue to hold U nonimmigrant status at the time he filed his U adjustment application and, accordingly, could not establish his eligibility for U-based adjustment of status.

On appeal, the Applicant admits that he mailed his U adjustment application “only a few days late” due to a misunderstanding of the timeframe and due to serious health conditions.¹ The Applicant states that he did not have an attorney to assist him and that his health conditions stem from the gunshot wounds he sustained in 2014 as a victim of felonious assault, which formed the basis of his U nonimmigrant status.

¹ The Applicant indicates that he is a paraplegic who suffers from post-traumatic stress disorder (PTSD), insomnia, depression, diabetes, low testosterone, and muscle spasms. He reports that he had a nervous breakdown last year due to his PTSD and he has problems with his cholesterol.

In light of his explanation above, the Applicant requests that USCIS consider his U adjustment application timely filed. The Applicant does not argue that USCIS improperly denied his U adjustment application but notes that his poor health impeded his efforts to file it in a timely manner.

U nonimmigrant status is generally granted for a maximum of four years and shall be extended beyond four years upon law enforcement certification of the U nonimmigrant's continued assistance in the investigation or prosecution of qualifying criminal activity or by USCIS, in its discretion, due to exceptional circumstances. Section 214(p)(6) of the Act. USCIS considers applications "received" as of "the actual date of receipt at the location designated for filing." 8 C.F.R. § 103.2(a)(7)(i). Our review of the record reveals that the Applicant did not file for an extension of his U nonimmigrant status through the filing of a Form I-539, Application to Extend/Change Nonimmigrant Status, a fact noted by the Director in the denial. The Applicant filed his U adjustment application via the United States Postal Service's Priority Mail Express on June 9, 2022, and it was received at the Nebraska Service Center on June 11, 2022, approximately 19 days after his U nonimmigrant status expired. Consequently, the Applicant was not in U nonimmigrant status when he filed his U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Although we recognize the hardship to the Applicant and his family that this result may cause, we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry "the force and effect of law").

The Applicant no longer held U nonimmigrant status at the time he filed his U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Accordingly, he was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act. This decision is without prejudice to the filing of a new U adjustment application should the Applicant request, and receive approval of, an extension of his U nonimmigrant status.

ORDER: The appeal is dismissed.