U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28164083

Date: OCT. 19, 2023

Appeal of Vermont Service Center 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(m), based on her "U-3" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U Nonimmigrant) and the matter is now before us on appeal. This office reviews the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant "admitted into the United States . . . under section 101(a)(15)(U) [of the Act]" to that of an LPR provided that she "has been physically present in the United States for a continuous period of at least 3 years since the date of admission" as a U nonimmigrant and otherwise establishes that 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. An applicant who is requesting adjustment of status under this section must submit evidence that she was lawfully admitted in U nonimmigrant status and continues to hold such status at the time of application. 8 C.F.R. § 245.24(d)(7).

The Applicant is a native and citizen of the Dominican Republic. The Applicant's mother filed a Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition) on her behalf, and USCIS approved the petition, valid from September 9, 2017 until September 8, 2021. The Applicant was in the Dominican Republic at the time her derivative U petition was approved, and she subsequently obtained a U-3 visa through consular processing with the U.S. Department of State (DOS), with validity from February 20, 2018 until March 7, 2021.[1] The Applicant entered the United States on March 15, 2018, and U.S. Customs and Border Protection (CBP) admitted her in U-3 status until March 7, 2021, as noted on her Form I-94, Arrival/Departure Record and entry stamp. She filed the instant U adjustment application in June 2021. The Director concluded that the Applicant did not continue to hold U nonimmigrant status at the time she filed her U adjustment application and, accordingly, could not establish her eligibility for U-based adjustment of status.

[1] We note that the Applicant's mother's Form I-918, Petition for U Nonimmigrant Status, was approved until March 7, 2021.

On appeal, the Applicant asserts that her June 2021 U adjustment application was timely filed. She contends that her derivative U petition was approved until September 8, 2021, and thus, she was in valid U status at the time she filed her U adjustment application in June 2021. She also maintains that she filed a Form I-539, Application to Extend/Change Nonimmigrant Status, in March 2023 and thus, she should be "treated as a current U-3 visa holder until her application for extension can be adjudicated."

A derivative family member who is outside of the United States at the time the U petition is approved does not obtain U nonimmigrant status until entry and admission into the United States on a U visa. 8 C.F.R. § 214.14(f)(6)(ii) ("When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval . . . [and] forward the approved [petition] to the [DOS] . . . ."). Subsequently, the derivative family member "should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant." 72 Fed. Reg. 53014. The period of authorized stay is determined by "the U nonimmigrant's Form I-94 issued to evidence status." *Id.* at 53028.

Here, as the Applicant's entry stamp and Form I-94 provided that her U-3 status was only authorized until March 7, 2021, we find no error in the Director's determination that the Applicant has not demonstrated that she held U nonimmigrant status at the time of filing her U adjustment application on June 9, 2021, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Although we recognize the hardship to the Applicant and her family that this result may cause, we lack the authority to waive the requirements of the regulations. *See 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). Consequently, the Applicant has not demonstrated that she is eligible for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.