



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

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

In Re: 28182579

Date: OCT. 19, 2023

Appeal of Nebraska 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 his “U-1” nonimmigrant status. 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 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 his 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-1 nonimmigrant status from December 2017 to December 2021. He filed his U adjustment application in October 2020. The Director determined that the Applicant was not eligible to adjust his status to that of a lawful permanent resident because, at the time of filing his U adjustment application, he did not demonstrate his physical presence in the United States for a continuous period of at least three years since his admission as a U-1 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 cites the regulation at 8 C.F.R. 245.24, and contends that “the period of time that [his] application was pending should have mattered in this case and USCIS should have seen that [he] clearly met the elements of adjustment up until his case was adjudicated.” He further contends that USCIS was not required to deny his application for missing initial evidence per 8 C.F.R. § 103.2(b). He argues that USCIS should have rejected his application and allowed him to re-file it while he still had U nonimmigrant status. He maintains that USCIS erred in failing to adjudicate his application in a timely manner and the agency should exercise *nunc pro tunc* relief to correct an error it caused.

While the regulation at 8 C.F.R. 245.24(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”). Furthermore, 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 other contentions on appeal. However, we reiterate that he was not physically present in the United States for a continuous period of at least three years since the date of his admission as a U-1 nonimmigrant until December 2017. He filed his U adjustment application in October 2020, more than three months 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 Applicant’s contentions on appeal and the hardship to him 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 continuous presence in the United States while he was in U-1 status, at the time of filing his U adjustment application, he was not in U nonimmigrant status for at least three years since his admission as a U nonimmigrant, as required.

III. CONCLUSION

The Applicant has not established that at the time of filing he 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.