



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

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

In Re: 28423211

Date: OCT. 30, 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 based on her derivative “U” nonimmigrant status as the child of a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center (Director) denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief reasserting her eligibility for the benefit sought.

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

To be eligible for adjustment of status as a U nonimmigrant, the applicant must demonstrate, among other eligibility criteria, that they were lawfully admitted to the United States as a U nonimmigrant and continue to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii).

II. ANALYSIS

The Applicant is a citizen of Brazil. The Applicant’s mother filed a derivative U petition on her behalf, and U.S. Citizenship and Immigration Services (USCIS) approved the petition from September 20, 2016, to September 19, 2020. The Applicant was in Brazil at the time her U petition was approved, and she subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). DOS issued the Applicant’s visa on October 11, 2016, with an expiration date of September 30, 2019. The Applicant entered the United States on December 18, 2016, and U.S. Customs and Border Protection admitted her in U-3 status until September 30, 2019 — the date her mother’s status expired. *See* 8 C.F.R. § 214.14(g)(1) (stating “that a qualifying family member granted U-2, U-3, U-4, and U-5 nonimmigrant status will be approved for an initial period that does not exceed the expiration date of the initial period approved for the principal alien.”). The Applicant filed her U adjustment application on January 24, 2020. The Director denied the application, concluding that the Applicant was ineligible to adjust her status under section 245(m) of the Act because her U-3 nonimmigrant status had expired on September 30, 2019.

On appeal, the Applicant references her Form I-797, Notice of Action, in which she was granted U-3 nonimmigrant status from September 20, 2016, to September 19, 2020. She maintains that she is eligible for adjustment of status because she filed her U adjustment application on January 24, 2020, prior to the expiration of her U-3 nonimmigrant status on September 19, 2020.

We note that a derivative family member who is outside of the United States at the time her U petition is approved does not obtain U status until her 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] . . .”). Subsequent to the approval of the U petition, 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.” *Id.* at 53014. The period of authorized stay is determined at the time of admission, and “as with all other nonimmigrant classifications, the U nonimmigrant’s Form I-94 issued to evidence status will indicate the approved period of stay.” *Id.* at 53028. In this case, the Applicant’s period of U nonimmigrant status was determined at the time of her admission into the United States. That status expired on September 30, 2019—the same date her mother’s U nonimmigrant status expired. Accordingly, the Applicant was not in U nonimmigrant status when she filed her U adjustment application in January 2020, as required under 8 C.F.R. § 245.24(b)(2)(ii).

III. CONCLUSION

The Applicant was not in U nonimmigrant status when she filed her U adjustment application. Accordingly, she is ineligible for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.