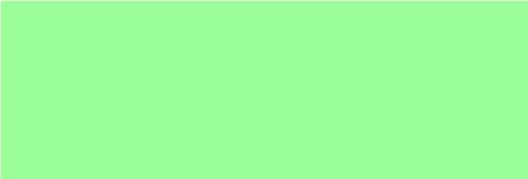
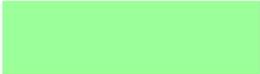


(b)(6)



U.S. Citizenship  
and Immigration  
Services



Date: **MAY 30 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Applicant: 

APPLICATION: Application to Adjust Status (Form I-485) for an Alien in U Nonimmigrant Status Pursuant to Section 245(m) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)

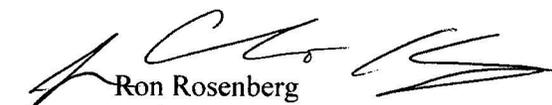
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center (the director), denied the Application to Adjust Status (Form I-485), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant, who was granted U-1 status, seeks lawful permanent residency under section 245(m)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(1), which states:

The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if

--

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

The regulation at 8 C.F.R. § 245.24(b) provides:

*Eligibility of U Nonimmigrants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2)(i) Was lawfully admitted to the United States as either a U-1, U-2, U-3, U-4 or U-5 nonimmigrant, as defined in 8 C.F.R. § 214.1(a)(2), and

(ii) Continues to hold such status at the time of application; or accrued at least 4 years in U interim relief status and files a complete adjustment application within 120 days of the date of approval of the Form I-918, Petition for U Nonimmigrant Status[.]

\* \* \*

The applicant was initially granted interim relief on August 28, 2006 based upon a request for U status that she filed during the pendency of the publication of the U visa rule. The applicant subsequently filed a Petition for U Nonimmigrant Status (Form I-918 U Petition), and on October 2, 2009, the director granted U-1 status to the applicant with validity dates of August 28, 2006 until October 1, 2010.

The applicant filed the instant Form I-485 on November 5, 2010, more than one month after the expiration of her U-1 status. On July 19, 2011, the director denied the applicant's adjustment of status application because she no longer continued to hold U-1 status at the time she filed her Form I-485. On July 20, 2011, the petitioner submitted an application to extend her U-1 status (Form I-539), which the director approved on January 9, 2012. The applicant's U-1 status was extended from October 2, 2010 until January 8, 2012.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As the applicant's U-1 status was extended from October 2, 2010, the day after her initial period in U-1 nonimmigrant status expired, until January 8, 2012, she continued to hold U-1 status at the time she filed her Form I-485 on November 5, 2010. Accordingly, the applicant has satisfied the regulation at 8 C.F.R. § 245.24(b)(2)(ii) and the director's decision is withdrawn.

Although the applicant has overcome the stated basis for the denial of the Form I-485, the AAO remands the matter to the director to determine whether the applicant has demonstrated her eligibility to adjust status under section 245(m)(1) of the Act as explicated at 8 C.F.R. § 245.24. As always, in these proceedings the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b),(d).

**ORDER:** The Vermont Service Center Director's July 19, 2011 decision is withdrawn and the matter remanded to the director for issuance of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.