



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

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

In Re: 13808346

Date: MAR. 9, 2021

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

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 denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), concluding that the Applicant did not establish that she continued to hold U status at the time of filing her U adjustment application, as required. We agreed with the Director’s finding and dismissed her appeal. On motion to reopen and reconsider, the Applicant submits additional evidence and asserts her eligibility. Upon review, we will grant the motion to reopen and remand the matter to the Director for the issuance of a new decision.¹

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

To be eligible for adjustment of status as a U nonimmigrant, the applicant must establish, among other requirements, that he or she was lawfully admitted as a U nonimmigrant and continues to hold such status at the time of application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(b)(2). An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Guatemala, was the qualifying family member of an approved Form I-918A, Petition for Qualifying Family Member of U-1 Recipient, valid from November 2013 until November 2017. The Applicant received a U-3 nonimmigrant visa and was admitted to the United States in U-3 nonimmigrant status in October 2014, with an authorized period of stay until November 2017. The Applicant filed the instant U adjustment application in August 2018, approximately eight months after the expiration of her authorized period of stay. The Director

¹ Therefore, we will not address the Applicant’s motion to reconsider.

therefore concluded that the Applicant did not establish that she continued to hold U-3 nonimmigrant status at the time of filing her U adjustment application. The Director mentioned that the Applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status (extension application), in October 2017, but that it was denied in October 2018.

On motion, the Applicant asserts that she filed another extension application and that such application was approved. Evidence submitted on motion reflects that she filed the additional extension application in January 2020, and she was granted U-3 nonimmigrant status retroactively from November 2017 until August 2021. Therefore, the record now shows that she held U-3 nonimmigrant status at the time of filing her U adjustment application.

III. CONCLUSION

The Applicant has established on motion that she held U-3 nonimmigrant status at the time of filing her U adjustment application. The Director did not otherwise determine whether the Applicant satisfied the remaining eligibility criteria at section 245(m) of the Act, including whether her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and, accordingly, whether a favorable exercise of discretion is warranted. Because the only ground for denial of the Applicant's U adjustment application has been overcome on motion, the matter will be remanded for the issuance of a new decision.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.