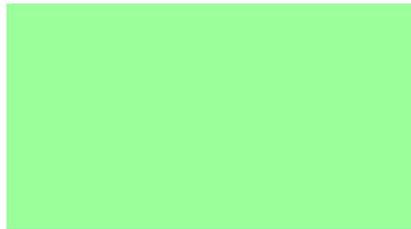


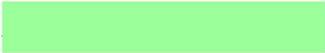


U.S. Citizenship  
and Immigration  
Services

(b)(6)

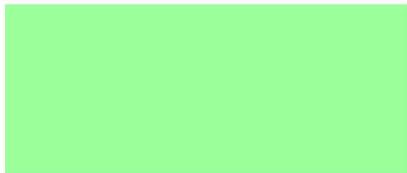


Date: **AUG 16 2013** Office: VERMONT SERVICE CENTER FILE: 

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)

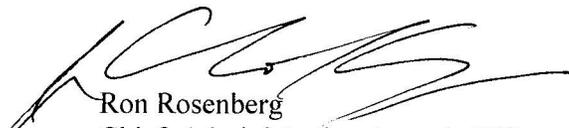
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
Ron Rosenberg  
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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 December 18, 2007 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 the director granted U-1 status to the applicant with validity dates of December 18, 2007 until December 17, 2011.

The applicant filed the instant Form I-485 on December 27, 2011, or ten days after the expiration of her U-1 status. On June 28, 2012, 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. The applicant appealed the director's adverse decision and concurrently submitted an application to extend her U-1 status (Form I-539) to the Vermont Service Center, which the director approved in March 2013. The applicant's U-1 status was extended from December 18, 2011 until March 14, 2014.

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 December 18, 2011, the day after her initial period in U-1 nonimmigrant status expired, until March 14, 2014, she continued to hold U-1 status at the time she filed her Form I-485 on December 27, 2011. 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 otherwise 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 June 28, 2012 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.