

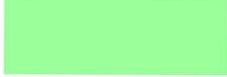
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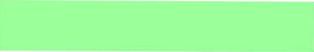
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **FEB 19 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:

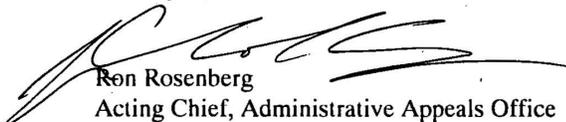


INSTRUCTIONS:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 appeal will be dismissed. The application will remain denied.

The applicant, who was granted U-1 nonimmigrant status, seeks to adjust his status under section 245(m)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(1).

*Applicable Law*

Section 245(m)(1) of the Act 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[.]

\* \* \*

Regarding the validity period of U nonimmigrant status, section 214(p)(6), 8 U.S.C. § 1184(p)(6) states, in pertinent part:

Duration of Status - The authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) shall be for a period of not more than 4 years . . . . The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status . . . shall be extended during the pendency of an application for adjustment of status under section 245(m).

*Facts and Procedural History*

The applicant was initially granted U interim relief on September 27, 2005 based upon his *prima facie* eligibility for U nonimmigrant status prior to publication of the U nonimmigrant visa interim rule. On November 6, 2009, the director granted U-1 nonimmigrant status to the applicant, valid from September 27, 2005 until September 29, 2010, based upon his approved Petition for U Nonimmigrant Status (Form I-918).

The applicant filed the instant Form I-485 on July 19, 2011, nearly 10 months after the expiration date of his U-1 nonimmigrant status. The director denied the applicant's adjustment of status application because he did not continue to hold U-1 nonimmigrant status at the time he filed his Form I-485.

On appeal, counsel submits a Notice of Action (Form I-797), dated August 2, 2011, which notifies the applicant that his U nonimmigrant status has been extended based upon his pending Form I-485. Counsel states, in part, that the applicant was in valid U nonimmigrant status "at the time of pursuing his adjustment" as evidenced by the Form I-797.

*Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Based on the evidence in the record, we find no error in the director's decision to deny the applicant's adjustment of status application.

A U nonimmigrant is eligible to adjust status under section 245(m)(1) of the Act if he or she, in part, "[c]ontinues to hold such status at the time of application." 8 C.F.R. § 245.24(b)(2)(ii). In April 2011, U.S. Citizenship and Immigration Services (USCIS) issued a memorandum, in part, to implement section 214(p)(6) of the Act, which states, in pertinent part:

To be eligible to file for adjustment of status, an alien must have been lawfully admitted as a U nonimmigrant and *continue to hold that status at the time of application for adjustment of status*

.....

.....

All adjustment of status applications will be adjudicated according to the U adjustment regulation at 8 CFR 245.24.

When a U nonimmigrant properly files for adjustment of status (*which includes the requirement that the applicant hold U nonimmigrant status at the time of filing*), USCIS will issue two Forms I-797, Notice of Action: a receipt notice for the application for adjustment of status and a notice of extension of the U nonimmigrant status. (Emphasis added)<sup>1</sup>

USCIS only extended the applicant's U nonimmigrant status to comply with section 214(p)(6) of the Act. The extension was not retroactive to the date that the applicant's U-1 nonimmigrant status expired, as it was a function of the applicant's submission of a Form I-485. Despite the extension of the applicant's U-1 nonimmigrant status, he must still comply with the regulation at 8 C.F.R. § 245.24(b)(2)(ii) by demonstrating that he "[c]ontinues to hold such status at the time of application."

Here, the applicant submitted his Form I-485 nearly 10 months after his U-1 nonimmigrant status had expired and, therefore, the regulation at 8 C.F.R. § 245.24(b)(2)(ii) bars the approval of his application to adjust status in the United States. This decision is without prejudice to the applicant requesting an extension of his U nonimmigrant status under section 214(p)(6) of the Act due to exceptional circumstances and filing a new Form I-485 if and when such an extension is granted.

#### *Conclusion*

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). Here, that burden has not been met as to the applicant's eligibility to adjust status under section 245(m)(1) of the Act and the appeal shall be dismissed.

**ORDER:** The appeal is dismissed. The application remains denied.

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<sup>1</sup> *Extension of Status for T and U Nonimmigrants; Revisions to Adjudicator's Field Manual (AFM) Chapter 39.1(g)(3) and Chapter 39.2(g)(3) USCIS PM-602-0032.1 (AFM Update AD11-28), 3, 8 (Apr. 19, 2011).*