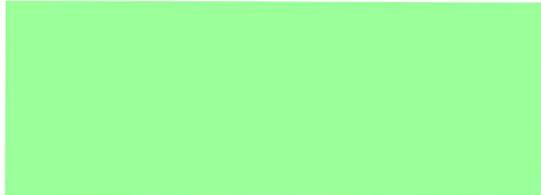


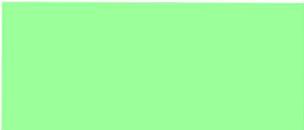
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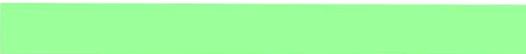
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

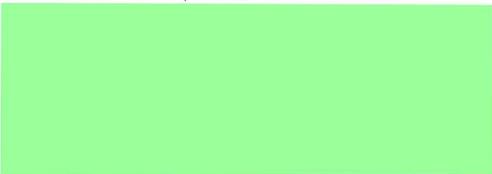


Date: FEB 19 2013 Office: VERMONT SERVICE CENTER FILE: 

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:

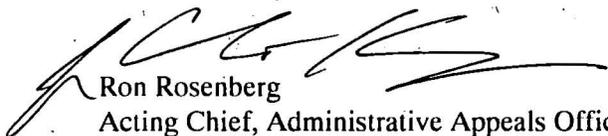


INSTRUCTIONS:

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, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity . . . that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. 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 beyond the 4-year period authorized under this section if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and 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 interim relief on January 17, 2006 based upon his *prima facie* eligibility for U nonimmigrant status prior to the publication of the U nonimmigrant visa interim rule. On March 9, 2010, the director granted U-1 nonimmigrant status to the applicant, valid from January 17, 2006 until March 8, 2011, based upon his approved Petition for U Nonimmigrant Status (Form I-918).

The applicant filed the instant Form I-485 on March 21, 2011, 13 days 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 states that the applicant was denied effective assistance of counsel when his former counsel, S-J¹, failed to inform him of the applicable deadlines for pursuing an adjustment of status application. Counsel states further that the applicant never received any notices from U.S. Citizenship and Immigration Services (USCIS), which would have enabled him to timely pursue an adjustment of status application on his own.

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.

The applicant has not demonstrated that his failure to file his Form I-485 prior to the expiration of his

¹ Name withheld to protect identity.

U-1 nonimmigrant status was due to the ineffective assistance of S-J-. The record contains a letter, dated September 8, 2010, from attorney J-S-L-² notifying USCIS that she was now the attorney of record, not S-J-, and requesting that any written communication from the Vermont Service Center should be sent to her attention. On March 23, 2010, nearly a year before the applicant's U nonimmigrant status expired, USCIS reissued a Notice of Action (Form I-797) to the applicant in care of J-S-L-, demonstrating that the applicant had been granted U-1 nonimmigrant status, valid from January 17, 2006 until March 8, 2011. The applicant has not alleged any ineffective assistance of counsel by J-S-L-.

Here, the applicant submitted his Form I-485 13 days 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.³

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.

This decision is without prejudice to the filing of a new Form I-485 should the applicant become eligible to adjust status under section 245(m) of the Act.

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

² Name withheld to protect identity.

³ On April 19, 2011 USCIS issued a memorandum regarding extensions of status for T and U nonimmigrants, which specifically discusses requests to extend U nonimmigrant status pursuant to section 214(p)(6) of the Act. The applicant may wish to consult this memorandum to determine whether he may be eligible to extend his U-1 nonimmigrant status at this time. *See 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) (AFM Update AD11-28), PM-602-0032.1, (Apr. 19, 2011).*