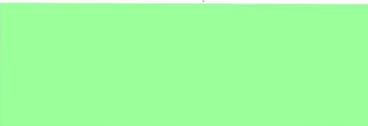
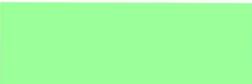


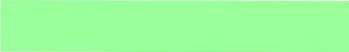


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 22 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:

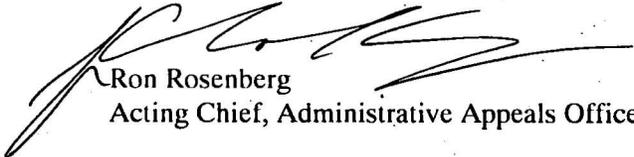
SELF-REPRESENTED

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

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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;

(3) Has continuous physical presence for 3 years as defined in paragraph (a)(1) of this section[.]

* * *

Facts and Procedural History

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The director granted U-1 nonimmigrant status to the applicant, valid from October 29, 2010 until October 28, 2014, based upon an approved Petition for U Nonimmigrant Status (Form I-918).

The applicant filed the instant Form I-485 on April 16, 2012, which the director denied because the applicant had not been physically present in the United States for a continuous period of at least three years since the date of his admission as a U nonimmigrant on October 29, 2010.

On appeal, the applicant states that he is eligible to submit a Form I-485 now because the regulation at 8 C.F.R. § 245.24(b)(2)(ii) states that an alien who accrued four years in U interim status may file a Form I-485 within 120 days of being granted U nonimmigrant status. According to the applicant, he was in U interim status beginning in 2005, the year that he became the victim of qualifying criminal activity, and that making a formal request for interim relief to U.S. Citizenship and Immigration Services (USCIS) was only optional.

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 regulation at 8 C.F.R. § 245.24(a)(3) states, in pertinent part:

U Interim Relief means deferred action and work authorization benefits provided by USCIS . . . to applicants for U nonimmigrant status deemed *prima facie* eligible for U nonimmigrant status prior to publication of the U nonimmigrant status regulations.

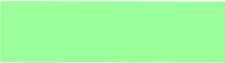
The applicant was not granted U interim relief. By his own admission he never requested such benefit in 2005 when he was victimized, or any time after.¹ Absent evidence of an affirmative grant of U interim relief to the applicant by USCIS, the second clause of the regulation at 8 C.F.R. § 245.24(b)(2)(ii) does not apply to him.

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.

¹See *Cent. of Interim Relief for U Nonimmigrant Status Applicants*, William R. Yates, Assoc. Dir. of Operations, (Oct. 8, 2003), (regarding how U interim relief was requested and processed).

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As noted by the director, this decision does not affect the validity of the applicant's U nonimmigrant status and is without prejudice to the filing of a new Form I-485 once the applicant meets the requirements of section 245(m) of the Act and the implementing regulations at 8 C.F.R. § 245.24.

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