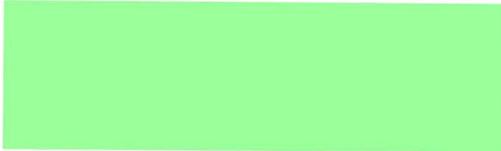




U.S. Citizenship
and Immigration
Services

(b)(6)



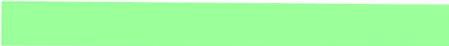
Date: **APR 18 2014** Office:

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)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(1)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Vermont Service Center (the director), denied the Application to Register Permanent Residence or Adjust Status (Form I-485), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant, who was granted U-5 nonimmigrant status, seeks to adjust her 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 provides, in pertinent part:

* * *

(b) *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 CFR § 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;

(4) Is not inadmissible under section 212(a)(3)(E) of the Act;

(5) Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and

(6) Establishes to the satisfaction of the Secretary that the alien's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

(c) *Exception.* An alien is not eligible for adjustment of status under paragraph (b) of this section if the alien's U nonimmigrant status has been revoked pursuant to 8 CFR § 214.14(h).

Facts and Procedural History

On February 3, 2010, the director granted U-5 nonimmigrant status to the applicant based upon an approved Petition for Qualifying Family Member of U-1 Recipient (Form I-918 Supplement A) that her sister filed on her behalf. The applicant's U-5 status was valid from November 20, 2007, the date she was granted interim relief, until November 19, 2011. The applicant filed the instant Form I-485 on July 25, 2011. On January 31, 2012, the director issued a Request for Evidence (RFE) of the applicant's ongoing helpfulness, her continuous physical presence in the United States since her admission as a U nonimmigrant, a self-affidavit attesting to her continuous physical presence, a medical examination report, and a copy of all the pages of her passport. The director denied the application on July 23, 2012 because the applicant failed to submit a self-affidavit and a complete copy of all the pages of her valid passport.

On appeal, the applicant explained that her attorney told her that he would submit all the requested evidence and did not inform her that she needed to submit a self-affidavit. She claimed that her attorney erred in failing to submit all the requested evidence. In support of the appeal, the applicant submitted a self-affidavit indicating that she has been continuously present in the United States and has not returned to Guatemala since she entered, and a copy of her passport, which was valid until July 24, 2013.

On February 11, 2014, the AAO issued an RFE to the applicant for a complete copy of all of the pages of her valid, unexpired passport, as the passport she held at the time of filing the appeal had expired while the appeal was pending. On March 13, 2014, the applicant submitted a copy of all of the pages of her current passport, which expires on January 9, 2019.

Analysis

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 has submitted a self-affidavit regarding her continuous physical presence in the United States and a copy of all the pages of her valid passport, she has overcome the stated basis for the

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NON-PRECEDENT DECISION

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denial of the Form I-485. Accordingly, the director's decision will be withdrawn and the Form I-485 will be approved.

Conclusion

In these proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b), (d); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met as to the applicant's eligibility to adjust status under section 245(m)(1) of the Act and the appeal shall be sustained.

ORDER: The appeal is sustained. The application is approved.